



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 22 दिसम्बर, 2023 / 01 पौष, 1945

हिमाचल प्रदेश सरकार

हिमाचल प्रदेश विधान सभा सचिवालय

अधिसूचना

दिनांक 20 दिसम्बर, 2023

संख्या वि०स०—विधायन—विधेयक / 1—59 / 2023.—हिमाचल प्रदेश विधान सभा की प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम—140 के अन्तर्गत हिमाचल प्रदेश पर्यटन विकास और रजिस्ट्रीकरण

197—राजपत्र / 2023—22—12—2023

(11131)

(संशोधन) विधेयक, 2023 (2023 का विधेयक संख्यांक 19) जो आज दिनांक 20 दिसम्बर, 2023 को हिमाचल प्रदेश विधान सभा में पुरःस्थापित हो चुका है, सर्व-साधारण को सूचनार्थ राजपत्र में मुद्रित करने हेतु प्रेषित किया जाता है।

हस्ताक्षरित /—
सचिव,
हि0 प्र0 विधान सभा।

2023 का विधेयक संख्यांक 19

हिमाचल प्रदेश पर्यटन विकास और रजिस्ट्रीकरण (संशोधन) विधेयक, 2023

खण्डों का क्रम

खण्डः

1. संक्षिप्त नाम और प्रारम्भ।
2. धारा 3 का संशोधन।
3. धारा 25 का संशोधन।
4. धारा 46 का संशोधन।
5. धारा 48 का संशोधन।
6. धारा 49 का संशोधन।
7. धारा 51 का संशोधन।
8. धारा 55 का संशोधन।
9. धारा 59 का प्रतिस्थापन।
10. धारा 64 का संशोधन।

2023 का विधेयक संख्यांक 19

हिमाचल प्रदेश पर्यटन विकास और रजिस्ट्रीकरण (संशोधन) विधेयक, 2023

(विधानसभा में पुरःस्थापित रूप में)

हिमाचल प्रदेश पर्यटन विकास और रजिस्ट्रीकरण अधिनियम, 2002 (2002 का अधिनियम संख्यांक 15) का और संशोधन करने के लिए विधेयक।

भारत गणराज्य के चौहत्तरवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो:-

1. संक्षिप्त नाम और प्रारम्भ.—(1) इस अधिनियम का संक्षिप्त नाम, हिमाचल प्रदेश पर्यटन विकास और रजिस्ट्रीकरण (संशोधन) अधिनियम, 2023 है।

(2) यह ऐसी तारीख को प्रवृत्त होगा, जो राज्य सरकार राजपत्र में अधिसूचना द्वारा नियत करे।

2. धारा 3 का संशोधन.—हिमाचल प्रदेश पर्यटन विकास और रजिस्ट्रीकरण अधिनियम, 2002 (जिसे इसमें इसके पश्चात् "मूल अधिनियम" कहा गया है) की धारा 3 में,—

(क) खण्ड (छ) के पश्चात् निम्नलिखित खण्ड अंतःस्थापित किया जाएगा, अर्थात्:—

"(छछ) "होमस्टे" से, राज्य में अवस्थित कोई भी प्राइवेट गृह अभिप्रेत है जिसे पर्यटकों को आवास के हेतु उपलब्ध कराया जाएगा;";

(ख) खण्ड (ढ) में,—

(i) "समय शेयर इकाई" शब्दों के पश्चात् "होमस्टे" शब्द अंतःस्थापित किया जाएगा; और

(ii) "साहसिक खेल-कूद प्रक्षेय" शब्दों के पश्चात् "रज्जूमार्ग, कन्वेंशन केन्द्र और वेलनेस केन्द्र" शब्द और चिन्ह अंतःस्थापित किए जाएंगे।

3. धारा 25 का संशोधन.—मूल अधिनियम की धारा 25 की उप-धारा (1) के पश्चात् प्रथम परन्तुक के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

"परन्तु केन्द्रीय सरकार या राज्य सरकार की किसी स्कीम के अधीन पहले से ही रजिस्ट्रीकृत और क्रियाशील पर्यटन इकाइयां हिमाचल प्रदेश पर्यटन विकास और रजिस्ट्रीकरण (संशोधन) अधिनियम, 2023 के प्रारम्भ की तारीख से तीस दिन की अवधि के भीतर ऐसी रीति जैसी विहित की जाए में रजिस्ट्रीकरण के लिए आवेदन करेगी:

परन्तु यह और कि लागू रजिस्ट्रीकरण फीस विद्यमान रजिस्ट्रीकरण के अवसान तक उद्गृहीत नहीं की जाएगी:

परन्तु यह और कि ऐसी पर्यटन इकाइयों को हिमाचल प्रदेश पर्यटन विकास और रजिस्ट्रीकरण (संशोधन) अधिनियम, 2023 के प्रारम्भ होने से 90 दिन की अवधि के भीतर यथाविहित अपेक्षाओं को पूर्ण करना होगा।"

4. धारा 46 का संशोधन.—मूल अधिनियम की धारा 46 में "छह मास से अनधिक अवधि के कारावास से या दस हजार रुपए से अनधिक जुर्माने से, या दोनों से" शब्दों और चिन्ह के स्थान पर, "एक लाख रुपए के जुर्माने से" शब्द रखे जाएंगे।

5. धारा 48 का संशोधन.—मूल अधिनियम की धारा 48 में "तो वह कारावास से जिसकी अवधि छह मास तक की हो सकेगी, या दस हजार रुपए से अनधिक जुर्माने से, या दोनों से" शब्दों और चिन्ह के स्थान पर, "एक लाख रुपए के जुर्माने से या रजिस्ट्रीकरण रद्द करना या दोनों से" शब्द रखे जाएंगे।

6. धारा 49 का संशोधन.—मूल अधिनियम की धारा 49 की उप-धारा (2) में "पांच हजार रुपए से अनधिक जुर्माने से" शब्दों और चिन्ह के स्थान पर, "दस हजार रुपए के जुर्माने से" शब्द रखे जाएंगे।

7. धारा 51 का संशोधन.—मूल अधिनियम की धारा 51 में "तो वह कारावास से जिसकी अवधि तीन मास तक की हो सकेगी, या एक हजार रुपए से अनधिक जुर्माने से, या दोनों से" शब्दों और चिन्ह के स्थान पर, "दस हजार रुपए के जुर्माने से" शब्द रखे जाएंगे।

8. धारा 56 का संशोधन.—मूल अधिनियम की धारा 55 की उप-धारा (1) में,

(क) “कोई राशि” शब्दों के पश्चात् “प्रश्नगत अपराध के लिए अधिरोपणीय जुर्माने का ठीक आधा” शब्द अन्तःस्थापित किए जाएंगे; और

(ख) “जिसके विरुद्ध अपराध किया गया हो” शब्दों और चिन्ह के पश्चात् “यदि ऐसा है तो,” शब्द अन्तःस्थापित किए जाएंगे।

9. धारा 59 का प्रतिस्थापन.—मूल अधिनियम की धारा 59 के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

“59. प्रमाण-पत्र का नवीकरण.— विहित प्राधिकारी द्वारा जारी किया गया रजिस्ट्रीकरण प्रमाण पत्र, रजिस्ट्रीकरण प्रमाण पत्र जारी होने की तारीख से दो वर्ष की अवधि के लिए विधिमान्य होगा। रजिस्ट्रीकरण प्रमाण पत्र का नवीकरण, विहित प्राधिकारी द्वारा ऐसी रीति से और ऐसी नवीकरण फीस के संदाय पर जैसी विहित की जाए, किया जाएगा।”।

10. धारा 64 का प्रतिस्थापन.—मूल अधिनियम की धारा 64 में उप-धारा (2) के खण्ड (ठ) के पश्चात् निम्नलिखित खण्ड अन्तःस्थापित किया जाएगा, अर्थात्:—

“(ड) होम स्टेज का रजिस्ट्रीकरण, नवीकरण, व्यापार, विनियमन और वर्गीकरण, होम स्टेज में स्वच्छता के रखरखाव के मानक, स्वच्छता, अपशिष्ट निपटान और न्यूनतम सुविधाएं और होम स्टेज के स्वामियों के कर्तव्यों और उत्तरदायित्वों का निर्धारण।”।

उद्देश्यों और कारणों का कथन

हिमाचल प्रदेश पर्यटन विकास और रजिस्ट्रीकरण अधिनियम को वर्ष 2002 में पर्यटन इकाइयों और पर्यटन क्रियाकलापों में लगे हुए व्यक्तियों के रजिस्ट्रीकरण को कारित करने और तत्संबद्ध अन्य मामलों को विनियमित करने के लिए अधिनियमित किया गया था। जबसे अधिनियम प्रवृत्त हुआ है, पर्यटन सैक्टर में इसके विस्तार, क्रियाकलापों और इन क्रियाकलापों में लगे हुए व्यक्तियों की गतिविधियों के सम्बन्ध में अत्यधिक परिवर्तन हुआ है। इसके अतिरिक्त, पर्यटन इकाइयों की संख्या और दायरे में विस्तार हुआ है तथा विभाग को विनियमन और अन्य कृत्यों जैसे इन पर्यटन इकाइयों के रजिस्ट्रीकरण या नवीकरण के क्रम में निरन्तर चुनौती का सामना करना पड़ रहा है। तथापि, अधिनियम में नए क्रियाकलापों/इकाइयों का पर्यटन क्रियाकलापों/इकाइयों के रूप में समावेश के क्रम में कोई पुनरीक्षण और इन पर्यटन इकाइयों के रजिस्ट्रीकरण के नवीकरण की आवृत्ति में पुनरीक्षण नहीं देखा गया है। पर्यटन व्यापार में लगे हुए व्यक्तियों में आत्मविश्वास को प्रोत्साहित करने हेतु अपराधों का वैधीकरण भी अपेक्षित है। इसलिए पूर्वोक्त अधिनियम में संशोधन करना आवश्यक हो गया है।

यह विधेयक उपरोक्त उद्देश्यों की पूर्ति के लिए है।

(सुखविंदर सिंह सुक्खू)
मुख्यमंत्री।

धर्मशाला:

तारीख....., 2023

Bill No. 19 of 2023

**THE HIMACHAL PRADESH TOURISM DEVELOPMENT AND REGISTRATION
(AMENDMENT) BILL, 2023**

ARRANGEMENT OF CLAUSES

Clauses:

1. Short title and commencement.
2. Amendment of section 3.
3. Amendment of section 25.
4. Amendment of section 46.
5. Amendment of section 48.
6. Amendment of section 49.
7. Amendment of section 51.
8. Amendment of section 55.
9. Substitution of section 59.
10. Amendment of section 64.

Bill No. 19 of 2023

**THE HIMACHAL PRADESH TOURISM DEVELOPMENT AND REGISTRATION
(AMENDMENT) BILL, 2023**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

*further to amend the Himachal Pradesh Tourism Development and Registration Act, 2002
(Act No.15 of 2002).*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Seventy-fourth Year of the Republic of India as follows:—

1. Short title and commencement.—(1) This Act may be called the Himachal Pradesh Tourism Development and Registration (Amendment) Act, 2023.

(2) It shall come into force on such date as the State Government may, by notification published in the Official Gazette, appoint.

2. Amendment of section 3.—In section 3 of the Himachal Pradesh Tourism Development and Registration Act, 2002 (hereinafter referred to as the ‘principal Act’),—

(a) after clause (g), the following clause shall be inserted, namely:—

“(gg) ‘home stay’ means any private house located in the State, which will be made available to the tourists for accommodation;”;

(b) in clause (n),—

(i) after the words and sign “time share units,”, the words and sign “Home Stays,” shall be inserted; and

(ii) after the words and sign “adventure sports complexes,”, the words and sign “Ropeways, Convention Centres and Wellness Centres,” shall be inserted.

3. Amendment of section 25.—In section 25 of the principal Act, after sub-section (1), for the first proviso, the following shall be substituted, namely:—

“Provided that the tourism units already registered and functional under any scheme of the Central or State Government shall apply for registration within a period of 30 days from the date of commencement of the Himachal Pradesh Tourism Development and Registration (Amendment) Act, 2023 in the manner as may be prescribed:

Provided further that applicable registration fee shall not be levied till the expiry of the existing registration:

Provided further that such tourism units shall have to fulfill the requirements as may be prescribed within a period of 90 days from the commencement of the Himachal Pradesh Tourism Development and Registration (Amendment) Act, 2023:”.

4. Amendment of section 46.—In section 46 of the principal Act, for the words and sign “imprisonment for a term not exceeding six months or with fine not exceeding ten thousand rupees or with both”, the words “fine of One lakh rupees” shall be substituted.

5. Amendment of section 48.—In section 48 of the principal Act, for the words “imprisonment for a term which may extend to six months or with fine not exceeding ten thousand rupees or with both”, the words “fine of One lakh rupees or cancellation of registration or with both” shall be substituted.

6. Amendment of section 49.—In section 49 of the principal Act, in sub-section (2), for the words “fine not exceeding five thousand rupees”, the words “fine of Ten thousand rupees” shall be substituted.

7. Amendment of section 51.—In section 51 of the principal Act, for the words “imprisonment which may extend to three months or with fine not exceeding one thousand rupees or with both”, the words “with fine of Ten thousand rupees” shall be substituted.

8. Amendment of section 55.—In section 55 of the principal Act, in sub-section (1),—

- (a) after the words “a sum of money”, the words “exactly half of the fine imposable for the offence in question” shall be inserted; and
- (b) after the words “has been committed”, the words, and sign “if that be the case,” shall be inserted.

9. Substitution of section 59.—For section 59 of the principal Act, the following shall be substituted, namely:—

“59. Renewal of Certificate.— The registration certificate issued by the prescribed authority shall be valid for a period of two years from the date of issuance of registration certificate. The registration certificate shall be renewed by the prescribed Authority in such manner and on payment of such renewal fee as may be prescribed.

10. Amendment of section 64.—In section 64, of the principal Act, in sub-section (2), after clause (l), the following clause shall be inserted, namely:—

“(m) registration, renewal, trade, regulation and classification of home stays, standards of maintenance of hygiene, cleanliness, waste disposal and minimum facilities in home stays and prescription of duties and responsibilities of owners of home stays.”.

STATEMENT OF OBJECTS AND REASONS

The Himachal Pradesh Tourism Development and Registration Act was enacted in the year 2002 to cause and regulate registration of tourism units and persons engaged in tourism activities, and other matters connected therewith. Ever since the Act came into force, tourism sector has undergone tremendous changes in terms of its scope, activities and number of persons engaged in these activities. Further tourism units have proliferated in number and scale and the department is continuously facing a challenge in terms of regulation and other functions like registration or renewal thereof. However, the Act has not seen any revision in terms of inclusion of new activities/units as tourism activities/units and revision of frequency of renewal of registration of these tourism units. The decriminalisation of offences is also required to encourage and instill confidence among persons engaged in the tourism trade. This has necessitated amendments in the Act *ibid*.

This Bill seeks to achieve the aforesaid objectives.

(SUKHVINDER SINGH SUKHU)
Chief Minister.

DHARAMSHALA:
THE, 2023.

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Dharamshala, the 03rd October, 2023*

No. Shram (A) 6-2/2020 (Awards) L.C.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Kangra at Dharamshala, H.P. on the website of Printing and Stationery Department *i.e.* “e-Gazette”—

| Sl. No | Case No. | Petitioner | Respondent | Date of Award / Order |
|--------|----------|-------------------|-------------------------------|-----------------------|
| 1. | 88/19 | Sudhir Kumar | E.E. I & PH Sarkaghat & other | 21-07-2023 |
| 2. | 90/19 | Mast Ram | -do- | 21-07-2023 |
| 3. | 89/19 | Nag Pal | -do- | 21-07-2023 |
| 4. | 87/19 | Rakesh Kumar | -do- | 21-07-2023 |
| 5. | 86/19 | Sushil Kumar | -do- | 21-07-2023 |
| 6. | 85/19 | Bhawani Singh | -do- | 21-07-2023 |
| 7. | 79/17 | Narpat Ram | D.F.O. Suket | 21-07-2023 |
| 8. | 18/18 | Guddi Devi | E.E. HPPWD, Dharampur | 21-07-2023 |
| 9. | 52/22 | Ram Dev | D.F.O. Joginder Nagar | 21-07-2023 |
| 10. | 376/15 | Kuldeep @Debi Ram | D.F.O. Suket | 31-07-2023 |
| 11. | 75/19 | Ajit | M.D. Oppo Mobile | 25-07-2023 |
| 12. | 77/19 | Vishal Dixit | -do- | 25-07-2023 |
| 13. | 76/19 | Kamal Kant | -do- | 25-07-2023 |
| 14. | 192/16 | Yog Raj | SEE, HPSEB, Joginder Nagar | 31-07-2023 |

By order,

DR. ABHISHEK JAIN, IAS,
Secretary (Lab. & Emp.)

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 88/2019

Date of Institution : 01-08-2019

Date of Decision : 21-07-2023

Shri Sudhir Kumar s/o Shri Kundan Lal, r/o Village Bahri, P.O. Kot, Tehsil Dharampur,
District Mandi, H.P. . . . *Petitioner.*

Versus

1. The Executive Engineer, I & P.H. Division, Sarkaghat, District Mandi, H.P.

2. Shri Pankaj Kumar Sharma, Government Contractor/ Proprietor, M/s Shiv Shakti Traders, Electrical & Engineering Works, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P.

....Respondents

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri N.L. Kaundal, Ld. A.R.

Sh. Rajat Chaudhary, Ld. Adv.

For the Respondent No.1 : Shri Anil Sharma, Ld. Dy. D.A.

Respondent No. 2. : Exparte Proceeded

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether termination of the services of Shri Sudhir Kumar s/o Shri Kundan Lal, r/o Village Bahri, P.O. Kot, Tehsil Dharampur, District Mandi, H.P. by (i) the Executive Engineer I & P.H. Division, Sarkaghat, District Mandi, H.P. (ii) Shri Pankaj Kumar Sharma, Government Contractor/Proprietor, M/s Shiv Shakti Traders, Electrical & Engineering Works, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 15-04-2017, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner as made out from the claim is that he is a qualified and trained pump operator and his services were engaged against vacant post by Assistant Engineer, IPH Department Dharampur w.e.f. 15.4.2015 and he worked in the aforesaid capacity till 14.4.2017. The respondent no.1 changed his service conditions without prior notice by showing him in the rolls of contractor Shri Pankaj Kumar Sharma. The petitioner used to work under the instructions and supervision of Assistant Engineer and his services were illegally terminated by contractor Shri Pankaj Kumar on 15.4.2017 on instructions of respondent no.1 without complying with the provisions of Section 25-F of the Act. Later on, a regular pump operator was engaged in his place the contractor used to pay him less salary than settled and that too after a gap of three four months by remitting the same in his bank account. In April 2018, another contractor namely Shri Balwant Singh was engaged by the department and the department engaged fresh hands namely Shri Ashok s/o Shri Hans Raj, Shri Vijay Kumar s/o Shri Bhag Singh without affording an opportunity and preference to the petitioner, who was senior, and thus the violation of Section 25-H also took place in the matter. The petitioner has alleged that changing of terms and conditions of his employment unilaterally and later on final termination of his services by the contractor, the respondent no.2 is contrary, unjustified and arbitrary and against the mandatory provisions of the Industrial Disputes Act hence, claim be allowed and his reinstatement be ordered with all benefits being seniority and continuity in service and full back wages.

3. The contractor chose to remain exparte throughout whereas, the Executive Engineer, the respondent no. 1, has resisted and contested the claim on several preliminary objections of

maintainability, *locus standi*, limitation, non-joinder of necessary parties and petitioner's conduct in approaching the court with tainted hands. On merits, the respondent no.1 denied the engagement of the petitioner by the respondent no.1 department. It is explained that the work of operation and maintenance of LWSS Kandapattan to Dhwali was awarded to Shri Pankaj Kumar Sharma contractor of Village Kalas, P.O. Thouna, Tehsil Sarkaghat, District Mandi, H.P. *vide* letter No. 21987-93 dated 23.1.2015 for a period of 12 months and he might have engaged the petitioner under him. The petitioner has no direct connection with the respondent no.1 nor the petitioner was engaged at any point of time. The respondent denied that the services of the petitioner were terminated at any point of time and fresh hands were engaged. It is admitted that contract in the year 2018 was awarded to Mr. Balwant Singh and rest of the contents are denied. It is submitted that the claim petition was neither maintainable nor had any merit.

4. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those made in the reply. The petitioner has further averred that the contractors allegedly engaged by respondent no.1 are not registered under the Contract Labour (Regulation & Abolition) Act, 1970 and since the work of operation and maintenance of pump is regular in nature therefore, regular employment was required but contract between the respondent no.1 and respondent no. 2 is said to be sham and bogus document with a view to frustrate the case of the petitioner and it is submitted that several violations of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 have occurred in this case, and therefore, the petitioner is entitled for the relief as claimed by him.

5. From the pleadings of the parties, following issues have been framed for determination in this case on 13.06.2022:—

1. Whether the termination of services of the petitioner *w.e.f.* 15-04-2017 by the respondents is violation of the provisions contained under section 25-F of the Act, as alleged? . . . *OPP.*
2. Whether the respondents have violated the provisions contained under section 25-G and 25-H of the Act, as alleged? . . . *OPP.*
3. If issues no.1&2 are proved in affirmative, to what relief, the petitioner is entitled to? . . . *OPP.*
4. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*
5. Whether the petitioner has no *locus standi* to file the petition, as alleged? . . . *OPR.*
6. Whether the claim petition is barred by limitation and suffers from delay and laches, as alleged? . . . *OPR.*
7. Whether the claim petition is bad for non-joinder of the necessary parties, as alleged? . . . *OPR.*
8. Whether the petitioner has not come to this Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . . . *OPR.*
9. Relief

6. I have heard learned A.R. and learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent no.1 at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

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|-------------|---|
| Issue No. 1 | : Negative |
| Issue No. 2 | : Negative |
| Issue No. 3 | : Negative |
| Issue No. 4 | : No |
| Issue No. 5 | : No |
| Issue No. 6 | : Redundant |
| Issue No. 7 | : No |
| Issue No. 8 | : Negative |
| Relief | : Petition is dismissed per operative portion of the Award |

REASONS FOR FINDINGS

ISSUES No.1 and 8 :

8. Both these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The reference received by this court from the appropriate Government is very material and the court can not go beyond the same as this court acquires the jurisdiction to decide the claim on the basis of this reference. This reference when examined carefully seeks this court to adjudicate the only question as to whether the services of the petitioner were terminated by the respondent nos.1 and 2 without complying with the provisions of the Industrial Disputes Act or not. The respondent no.1 is Executive Engineer and the respondent no. 2 is a Government Contractor. It may be stated here that Government Contractor is not an industry nor the Government Contractor does his own work. A Government Contractor works to execute the contracts awarded to him by the Government and therefore, the Government Contractor is bound by the terms and conditions of the contract. If the contract has been entered with Government contractor by the Government for a period of one year, the labour engaged by him to execute the contract can not for any stretch of imagination contend that the very same work be done by the contractor for all the times to come. It is not material whether the works was for the time being or it was of permanent nature but it is the contract that prevails. In case the contract is for one year, then the contract comes to an end as per this terms and conditions. No Contractor can insist any department or Government office that after the contract with him has come to an end, he be permitted to work on another project forever. In case the contractor at the end of the contract releases his labour on the ground that since the contract is over he does not need the service of the labour any more, the labour can not contend that such contractor should work on the same project for next one year. Since the contracts are awarded by way of open tenders thus contracts are governed by terms and conditions thereof, and therefore, no contract can run into perpetuity but every contract has come to an end with the period for which it was executed.

10. In the case in hand, the respondent no. 2 Shri Pankaj Kumar Sharma is a contractor and respondent no.1 is Executive Engineer. It is case of the respondent that in the year 2015 the work of operation and maintenance of LWSS from Kandapattan to Dhawali closing repair and maintenance pumping machinery was awarded to the respondent no. 2. This fact is clear from the statement of Shri Sandeep Kant Sharma (RW1) who has tendered on record the award letter Ext. RW1/B. A careful perusal of this award letter shows that tenders were floated and opened in the presence of the bidders and negotiations took place on the lowest quoted rate and finally the tender of Shri Pankaj Kumar Sharma, the Government contractor was accepted and the work of operation and maintenance of aforesaid water scheme was awarded to him for one year for Rs.11,30,000/- (Ext. RW1/B). There are terms and conditions in this letter and he was supposed to execute the work after 15 days of issue of the award and the work was for definite period. Ex.RW1/C are the bills which were sanctioned by the department in favour of Shri Pankaj Kumar Sharma. It is very much clear from this document, Ext. RW1/C that it is not a sham and bogus one as tenders were invited from the open market in which the respondent no. 2 was short listed and the award letter was issued. In case, any irregularity had taken place while awarding the work to the respondent no. 1, rest of the contractors of the area/field would not have sit idle. They would have raised the protest and assailed the award before higher authorities. Since none came forward to challenge this tender/award therefore, the presumption goes that the official work was done by the respondent no.1 in the manner it was supposed to be done and such contract is neither bogus nor a camouflage in convenience with the respondent no. 2 and cheat the petitioner and others.

11. When this work allotted to respondent no. 2 was done by him in the year 2014-2015, the respondent no.1 had no reason to engage the services of the petitioner without appointment letter on 15 April 2015. The 15 April is Himachal Day and all the projects and all the offices are closed in order to celebrate the day. There were no reasons to engage the petitioner on public holiday by the department. No interview has taken place and no such post was advertised and no other witness has been examined by the petitioner to prove that some public appointments took place through Assistant Engineer. When the work was awarded *vide* award letter to a contractor by the department there was no reason for the Assistant Engineer of the office to engage the petitioner and that too without appointment letter and without following the process of appointment. The plea of the petitioner to this effect on the face of it appears as concocted and can not be relied upon.

12. The petitioner has pleaded in para no. 3 of his claim vaguely that terms and conditions of his employment were changed without notice to him. He has neither pleaded any date nor any month when his terms and conditions were changed. On the one hand, he has taken the plea that no terms and conditions were settled with him and no appointment letter was issued to him, and on the other hand, he claimed that the terms and conditions of his service were altered. He has not placed on record any extract of his saving passbook whereby any payment was made to him directly by the respondent no.1 as his wages. The judicial notice can be taken of the fact by the court that in the year 2015 public money was disbursed through bank accounts and not even a single rupee of the wages was disbursed in cash. Had the Executive Engineer transferred any wages in the bank account of the petitioner, he could have proved this fact on the record by placing extracts of his bank accounts. No evidence has been led by him on the record to show that he has received the wages from the respondent no. 1 at any point of time. It is rather proved that the water scheme was handed over to the respondent no. 2 by respondent no. 1 by awarding the tender during period when the petitioner claims that he was engaged by the department. When such is the position it is quite possible that the petitioner might have working with the respondent no. 2 and now he has joint hands the respondent no. 2 to prove that he was the employee of the respondent no.1. It is for this reason the respondent no. 2 has not chosen to contest the claim.

13. The petitioner while leading his evidence has tendered his affidavit Ext. PW1/A in which he has referred to all the pleadings. He was subjected to cross-examination wherein he has

admitted in clear terms that the alleged work was awarded to the respondent no. 2 by the respondent no. 1. He has volunteered to depose that his services were initially engaged by the respondent no. 1. when the work was awarded to the respondent no. 2 by the respondent no. 1, there was no reason to engage the services of the petitioner. It is easy for anyone to plead that he was engaged by the government in public employment. Such allegations do not serve the purpose unless better evidence is led. In this case had the petitioner been engaged by the Executive Engineer (respondent no.1) he could have proved the receipt of wages in his bank account by leading evidence from the bank. He could have examined any other person who was working with the department at that time on muster roll. The petitioner has not done anything and his self serving testimony does not take his case anywhere.

14. The respondent no.1 on the other hand has examined Shri Sandeep Kant Sharma, Executive Engineer as RW1. He has sworn his affidavit Ext. RW1/A in detail mentioning therein the manner how the work was awarded to Shri Pankaj Kumar contractor in accordance with the law. He has also sworn his affidavit to the effect that the petitioner must be the worker of the contractor. He was subjected to cross-examination wherein he stated that he was well conversant with the record. He has tendered on record the award letter Ext. RW1/B and bills regarding payment to the contractor as Ext. RW1/C. He was cross-examined wherein he denied specifically that the interview of the petitioner was conducted on 15.04.2015 by the department. This suggestion in itself shatters the case of the petitioner and falsifies the same. As aforesaid, 15th April is celebrated as Himachal Day and all the offices remain closed. No interviews are conducted on Himachal day. Secondly, once the petitioner alleges that his interview was conducted, he should have placed on record any interview letter issued to him *vide* which he came to know about the date, time and place of the interview. No such document has been placed on the record. In the absence of the same the entire story stands falsified. This witness has further stated that he had not placed on the record any document to show that department was registered under the Contract Labour (Regulation and Abolition) Act, 1970. He has also stated that he has also not placed on the record the registration Certificate of Shri Pankaj contractor. He has specifically denied that this award letter was prepared as sham and bogus. When the award letter was carefully examined, it is clear that respondent no. 2 was short-listed after calling for the tenders and this document was not prepared later on. In case, there is violation of any provisions of Contract Labour (Regulation and Abolition) Act, in that case, the petitioner can not become the workman of respondent no.1 unless it is proved that no such tender was called and no such work was allotted to the respondent no. 2. Law is well settled to this effect by the Hon'ble Supreme Court in **Kirloskar Brothers Limited vs. Ramchandaran & Ors. in Civil Appeal Nos. 8446-8447 of 2022 decided on 05.12.2022**. Para nos. 4.1 and 4.2 of the aforesaid judgment are as under:—

“4.1.....On going through the entire material on record, no documentary evidence was produced, by which it can be said that the contesting respondents were the employees of the appellant. There is no provision under section 10 of the CLRA Act that the workers/employees employed by the contractor automatically become the employees of the appellant and/or the employees of the contractor shall be entitled for automatic absorption and/or they become the employees of the principal employer. It is to be noted that even the direct control and supervision of the contesting respondents was always with the contractor. There is no evidence on record that any of the respondents were given any benefits, uniform or punching cards by the appellant”.

“4.2. Under the contract and even under the provisions of the CLRA, a duty was cast upon the appellant to pay all statutory dues, including salary of the workmen, payment of PF contribution, and in case of non-payment of the same by the contractor, after making such payment, the same can be deducted from the

contractor's bill. Therefore, merely because sometimes the payment of salary was made and/or PF contribution was paid by the appellant, which was due to non-payment of the same by the contractor, the contesting respondents shall not automatically become the employees of the principal employer-appellant herein.....”

15. In case, it is presumed for a while that there are some irregularities in not following the provisions of Contract Labour (Regulation and Abolition) Act in letter and spirit, even then the petitioner automatically does not become the worker of the respondent no.1 and the petitioner is therefore, not entitled to the relief as claimed for by him. The petitioner has himself concealed the true facts from this court. He has claimed vaguely that he was engaged prior to the contract with the respondent no. 2 took place. He has failed to establish the same. The petitioner is not proved to be the workman of respondent no.1 and therefore, in case his services were terminated by respondent no. 2 on the completion of the work awarded to him by way of award letter, it is held that Section 25-F of the Industrial Disputes Act is not applicable to the present situation, and the petitioner is not entitled for any such benefit. Hence issues no. 1 and 8 are held in negative against the petitioner.

ISSUES No. 2 & 3 :

16. The petitioner has pleaded that fresh hands namely Shri Ashok and Shri Vijay have been engaged by the respondent in the year 2018. Such pleadings are made in para no. 7 of the claim. It is mentioned in the same that the work was allotted to another contractor Shri Balwant Singh to operate and maintain the pump. When this is so, it can not be said that any regular engagement took place. In case there is post then the entire selection process has to be followed before engagement of any worker in the Government department. Since the petitioner is not proved that he was workman of the respondent no.1 however, provisions of Sections 25-G and 25-H of the Act are not applicable in this case, hence both these issues are also held in negative.

ISSUES No. 4 & 5 :

17. Petition is maintainable as well as the petitioner has the *locus standi* for the reason that it has been filed in support of the reference but it is different matter that the petitioner has failed to establish the claim, hence both these issues are held against the respondents.

ISSUE No. 6 :

18. The respondent no.1 pleaded that the petition is barred by limitation but this issue does not arise in this case and it is held as redundant. There is no limitation when the claim is filed in support of the reference received from the appropriate government.

ISSUE No. 7 :

19. Since allegations have been leveled against both the respondents therefore, claim is not bad for non-joinder of necessary parties as no third person is required in this case. No such third party has been pointed who should have been joined in this claim. Hence this issue is answered in negative.

Relief :

20. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 21st day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 90/2019
Date of Institution : 01-08-2019
Date of Decision : 21-07-2023

Shri Mast Ram s/o Shri Balu Ram, r/o Village Janjhial, P.O. Ropri, Tehsil Sarkaghat,
District Mandi, H.P. . . *Petitioner.*

Versus

1. The Executive Engineer, I & P.H. Division, Sarkaghat, District Mandi, H.P.
2. Shri Mahesh Chand, Electrical Government Contractor, r/o V.P.O. Khouda, Tehsil Sarkaghat, District Mandi, H.P. . . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri N.L. Kaundal, Ld. A.R.
Shri Rajat Chaudhary, Ld. Adv.
For the Respondent No.1 : Shri Anil Sharma, Ld. Dy. D.A.
Respondent No. 2 : Exparte proceeded

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether termination of the services of Shri Mast Ram s/o Shri Babu Ram, r/o Village Janjhial, P.O. Ropri, Tehsil Sarkaghat, District Mandi, H.P. by (i) the Executive Engineer I & P.H. Division, Sarkaghat, District Mandi, H.P. (ii) Shri Mahesh Chand, Electrical Government Contractor, r/o V.P.O. Khouda, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 19-04-2018, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner as made out from the claim is that he was engaged as Fitter-cum-Water Guard at LWSS Scheme Churu ra Balh water scheme by the respondent no.1 through respondent no. 2 w.e.f. 30.11.2015 against the regular post and he worked in the aforesaid capacity till 18.4.2017. His work was satisfactory and upto the mark and his services were terminated without any cause and one Sh. Raj Kumar was engaged in his place. The petitioner has alleged that termination of his services is contrary, unjustified and arbitrary and against the mandatory provisions of the Industrial Disputes Act hence, claim be allowed and his reinstatement be ordered with all benefits being seniority and continuity in service and full back wages.

3. The contractor chose to remain exparte throughout whereas, the Executive Engineer, the respondent no.1, has resisted and contested the claim on several preliminary objections of maintainability, *locus standi*, limitation, non-joinder of necessary party and petitioner's conduct in approaching the court with tainted hands. On merits, the respondent no.1 denied the engagement of the petitioner by the respondent no.1 department. It is explained that the work of operation and maintenance of LWSS Churu Ka Balh was awarded to Shri Mahesh Chand contractor of Village Kalas, P.O. Thouna, Tehsil Sarkaghat, District Mandi, H.P. vide letter No.148-46-50 dated 28.8.2015 for a period of 12 months and he might have engaged the petitioner under him. The petitioner has no direct connection with the respondent no.1 nor the petitioner was engaged at any point of time. The respondent denied that the services of the petitioner were terminated at any point of time and fresh hands were engaged. It is also denied that the appointment was given to one sh. Raj Kumar as alleged.

4. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those made in the reply. The petitioner has further averred that the contractors allegedly engaged by respondent no.1 are not registered under the Contract Labour (Regulation & Abolition) Act, 1970 and since the work of operation and maintenance of pump is regular in nature therefore, regular employment was required but contract between the respondent no.1 and respondent no. 2 is said to be sham and bogus document with a view to frustrate the case of the petitioner and it is submitted that several violations of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 have occurred in this case, and therefore, the petitioner is entitled for the relief as claimed by him

5. From the pleadings of the parties, following issues have been framed for determination in this case on 13.06.2022:—

1. Whether the termination of services of the petitioner w.e.f. 19.4.2018 by the respondents is violation of the provisions contained under section 25-F of the Act, as alleged? . . . *OPP*.
2. Whether the respondents have violated the provisions contained under section 25-G and 25-H of the Act, as alleged? . . . *OPP*.

3. If issues no.1&2 are proved in affirmative, to what relief, the petitioner is entitled to?
.. *OPP*.
4. Whether the claim petition is not maintainable, as alleged? .. *OPR*.
5. Whether the petitioner has no *locus standi* to file the petition, as alleged? .. *OPR*.
6. Whether the claim petition is barred by limitation and suffers from delay and laches, as alleged? .. *OPR*.
7. Whether the claim petition is bad for non-joinder of the necessary parties, as alleged? .. *OPR*.
8. Whether the petitioner has not come to this Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? .. *OPR*.
9. Relief

6. I have heard learned A.R. and learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent no.1 at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

| | |
|-------------|---|
| Issue No. 1 | : Negative |
| Issue No. 2 | : Negative |
| Issue No. 3 | : Negative |
| Issue No. 4 | : No |
| Issue No. 5 | : No |
| Issue No. 6 | : Redundant |
| Issue No. 7 | : No |
| Issue No. 8 | : Negative |
| Relief | : Petition is dismissed per operative portion of the Award |

REASONS FOR FINDINGS

ISSUES No.1 and 8 :

8. Both these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The reference received by this court from the appropriate Government is very material and the court can not go beyond the same as this court acquires the jurisdiction to decide the claim on the basis of this reference. This reference when examined carefully seeks this court to adjudicate the only question as to whether the services of the petitioner were terminated by the respondent nos. 1 and 2 without complying with the provisions of the Industrial Disputes Act or not. The respondent no.1 is Executive Engineer and the respondent no. 2 is a Government Contractor. It may be stated here that Government Contractor is not an industry nor the Government Contractor does his own work. A Government Contractor works to execute the contracts awarded to him by the Government and therefore, the Government Contractor is bound by the terms and conditions of the contract. If the contract has been entered with Government contractor by the Government for a period of one year, the labour engaged by him to execute the contract can not for any stretch of imagination contend that the very same work be done by the contractor for all the times to come. It is not material whether the works was for the time being or it was of permanent nature but it is the contract that prevails. In case the contract is for one year, then the contract comes to an end as per this terms and conditions. No Contractor can insist any department or Government office that after the contract with him has come to an end, he be permitted to work on another project forever. In case the contractor at the end of the contract releases his labour on the ground that since the contract is over he does not need the service of the labour any more, the labour can not contend that such contractor should work on the same project for next one year. Since the contracts are awarded by way of open tenders thus contracts are governed by terms and conditions thereof, and therefore, no contract can run into perpetuity but every contract has come to an end with the period for which it was executed.

10. In the case in hand, the respondent no. 2 Shri Mahesh Chand Sharma is a contractor and respondent no.1 is Executive Engineer. It is case of the respondent that in the year 2015 the work of operation and maintenance of LWSS Churu ka Balh i/c repair and maintenance of pumping machinery, Rising Main Feeder Pipe and Pump House upto main storage Tank (One Year) was awarded to the respondent no. 2. This fact is clear from the statement of Shri Sandeep Kumar Sharma (RW1) who has tendered on record the award letter Ext. RW1/B. A careful perusal of this award letter shows that tenders were floated and opened in the presence of the bidders and negotiations took place on the lowest quoted rate and finally the tender of Shri Mahesh Chand, the Government contractor was accepted and the work of operation and maintenance of aforesaid water scheme was awarded to him for one year for Rs.1,80,000/-. There are terms and conditions in this letter and he was supposed to execute the work after 15 days of issue of the award and the work was for definite period. Ex. RW1/C is the details bill which was sanctioned by the department in favour of the respondent no. 2. It is very much clear from this document that it is not a sham and bogus one as open tenders were invited in which the respondent no. 2 was short listed and the award letter was issued. In case any irregularity had taken place while awarding the work to the respondent no. 1, rest of the contractors of the area/field would not have sit idle. They would have raised the protest and assailed the award before higher authorities. Since none came forward to challenge this tender/award therefore, the presumption goes that the official work was done by the respondent no.1 in the manner it was supposed to be done and such contract is neither bogus nor a camouflage in order to help the respondent no. 2 and cheat the petitioner and likewise.

11. When this work allotted to respondent no. 2 *vide* award letter dated 28.08.2015 by the respondent no.1, there was no reason to engage the services of the petitioner without appointment letter on 30.11.2015. No interview has taken place and no such post was advertised and no other witness has been examined by the petitioner to prove that some public appointments took place through Assistant Engineer. When the work was awarded *vide* award letter to a contractor by the department there was no reason for the Assistant Engineer of the office to engage the petitioner and that too without appointment letter and without following the process of appointment. The plea of the petitioner to this effect on the face of it appears as concocted and can not be relied upon.

12. Had the petitioner been engaged and paid by the respondent no. 1, he would have placed on the record any extract of his saving passbook whereby any payment was made to him directly by the respondent no.1 as his wages. The judicial notice can be taken of the fact by the court that in the year 2015 public money was disbursed through bank accounts and not even a single rupee of the wages was disbursed in cash. Had the Executive Engineer transferred any wages in the bank account of the petitioner, he could have proved this fact on the record by placing extracts of his bank accounts. No evidence has been led by him on the record to show that he has received the wages from the respondent no. 1 at any point of time. It is rather proved that the water scheme was handed over to the respondent no. 2 by respondent no.1 by awarding the tender during period when the petitioner claims that he was engaged by the department. When such is the position it is quite possible that the petitioner might have working with the respondent no. 2 and now he has joint hands the respondent no.2 to prove that he was the employee of the respondent no. 1. It is for this reason the respondent no. 2 has not chosen to contest the claim.

13. The petitioner while leading his evidence has tendered his affidavit Ext. PW1/A in which he has referred to all the pleadings. He was subjected to cross-examination wherein he has admitted that the work was awarded to the respondent no. 2 by the respondent no. 1. He could have specifically denied the suggestion. It is easy for anyone to plead that he was engaged by the government in public employment. Such allegations do not serve the purpose unless better evidence is led. In this case had the petitioner been engaged by the Executive Engineer (respondent no.1) he could have proved the receipt of wages in his bank account by leading evidence from the bank. He could have examined any other person who was working with the department at that time on muster roll. The petitioner has not done anything and his self serving testimony does not take his case anywhere. Had any engagement against the regular post taken place the post would have been advertised and large number of candidates would have appeared in the selection process. No such evidence has been led by the petitioner. The petitioner has not led any evidence on the record to prove as to why he was chosen for this job by the department by ignoring all the norms for the selection of a candidate.

14. The respondent no.1 on the other hand has examined Shri Sandeep Kant Sharma, Executive Engineer as RW1. He has sworn his affidavit Ext. RW1/A in detail mentioning therein the manner how the work was awarded to Shri Mahesh Chand contractor in accordance with the law. He has also sworn his affidavit to the effect that the petitioner must be the worker of the contractor. He was subjected to cross-examination wherein he stated that he was well conversant with the record. He has tendered on record the award letter Ext. RW1/B and bills regarding payment to the contractor as Ext. RW1/C. He was examined wherein he stated that he had not placed on the record any document to show that department was registered under the Contract Labour (Regulation and Abolition) Act, 1970. He has also stated that he has also not placed on the record the registration Certificate of Shri Mahesh Chand contractor. He has specifically denied that this award letter was prepared as sham and bogus. When the award letter was carefully examined, it is clear that respondent no. 2 was short-listed after calling for the tenders and this document was not prepared later on. In case, there is violation of any provisions of Contract Labour (Regulation and Abolition) Act, in that case, the petitioner can not be become the workman of respondent no.1 unless it is proved that no such tender was called and no such work was allotted to the respondent no.2. Law is well settled to this effect by the Hon'ble Supreme Court in **Kirloskar Brothers Limited vs. Ramchandaran & Ors. in Civil Appeal Nos. 8446-8447 of 2022 decided on 05.12.2022**. Para nos. 4.1 and 4.2 of the aforesaid judgment are as under:—

“4.1.....On going through the entire material on record, no documentary evidence was produced, by which it can be said that the contesting respondents were the employees of the appellant. There is no provision under section 10 of the CLRA Act that the workers/employees employed by the contractor automatically become the

employees of the appellant and/or the employees of the contractor shall be entitled for automatic absorption and/or they become the employees of the principal employer. It is to be noted that even the direct control and supervision of the contesting respondents was always with the contractor. There is no evidence on record that any of the respondents were given any benefits, uniform or punching cards by the appellant”.

“4.2. Under the contract and even under the provisions of the CLRA, a duty was cast upon the appellant to pay all statutory dues, including salary of the workmen, payment of PF contribution, and in case of non-payment of the same by the contractor, after making such payment, the same can be deducted from the contractor’s bill. Therefore, merely because sometimes the payment of salary was made and/or PF contribution was paid by the appellant, which was due to non-payment of the same by the contractor, the contesting respondents shall not automatically become the employees of the principal employer-appellant herein.....”

15. In case, it is presumed for a while that there are some irregularities in not following the provisions of Contract Labour (Regulation and Abolition) Act in letter and spirit, even then the petitioner automatically does not become the worker of the respondent no.1 and the petitioner is therefore, not entitled to the relief as claimed for by him. The petitioner has himself concealed the true facts from this court. He has claimed vaguely that he was engaged through the respondent no. 2. He has failed to establish the same. The petitioner is not established to be the workman of respondent no.1 and therefore, in case his services were terminated by respondent no. 2 on the completion of the work awarded to him by way of award letter, it is not proved that Section 25-F of the Industrial Disputes Act was violated in this case. Hence issues no.1 and 8 are held in negative against the petitioner.

ISSUES No. 2 & 3 :

16. The petitioner has pleaded that fresh hands namely Shri Raj Kumar was engaged by the respondent no. 1 after him. Since the petitioner has not been able to prove that he was workman of the respondent no.1, therefore, violation of Section 25-H of the Act is not established even if it is assumed for a while that one Raj Kumar was engaged by the respondent no. 1 later on on the expiry of the contract with the respondent no. 2. Hence both these issues are also held in negative.

ISSUES No. 4 & 5 :

17. Petition is maintainable as well as the petitioner has the *locus standi* for the reason that it has been filed in support of the reference but it is different matter that the petitioner has failed to establish the claim, hence both these issues are held against the respondents.

ISSUE No. 6 :

18. The respondent no. 1 pleaded that the petition is barred by limitation but this issue does not arise in this case and it is redundant.

ISSUE No. 7 :

19. Since allegations have leveled against both the respondents therefore, claim is not bad for non-joinder of necessary parties as no third person is required in this case. Hence this issue is answered in negative.

Relief :

20. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 21st day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 89/2019
Date of Institution : 01-08-2019
Date of Decision : 21-07-2023

Shri Nag Pal Thakur s/o Shri Prabhu Ram Thakur, r/o Village Balhra, P.O. Kot, Tehsil Dharampur, District Mandi, H.P. . . *Petitioner.*

Versus

1. The Executive Engineer, I. & P.H. Division, Sarkaghat, District Mandi, H.P.
2. Shri Pankaj Kumar Sharma, Government Contractor/ Proprietor, M/s Shiv Shakti Traders, Electrical & Engineering Works, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. . . *Respondents .*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri N.L. Kaundal, Ld. A.R.

Sh. Rajat Chaudhary, Ld. Adv.

For the Respondent No. 1 : Shri Anil Sharma, Ld. Dy. D.A.

Respondent No. 2 : Exparte Proceeded

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether termination of the services of Shri Nag Pal Thakur s/o Shri Prabhu Ram Thakur, r/o Village Balhra, P.O. Kot, Tehsil Dharampur, District Mandi, H.P. by (i) the Executive Engineer I.&P.H. Division, Sarkaghat, District Mandi, H.P. (ii) Shri Pankaj Kumar Sharma, Government Contractor/Proprietor, M/s Shiv Shakti Traders, Electrical & Engineering Works, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 15-04-2017, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner as made out from the claim is that he is a qualified and trained pump operator and his services were engaged against vacant post by Assistant Engineer, IPH Department Dharampur w.e.f. 15.4.2015 and he worked in the aforesaid capacity till 14.4.2017. The respondent no.1 changed his service conditions without prior notice by showing him in the rolls of contractor Shri Pankaj Kumar Sharma. The petitioner used to work under the instructions and supervision of Assistant Engineer and his services were illegally terminated by contractor Shri Pankaj Kumar on 15.4.2017 on instructions of respondent no.1 without complying with the provisions of Section 25-F of the Act. Later on, a regular pump operator was engaged in his place the contractor used to pay him less salary than settled and that too after a gap of three four months by remitting the same in his bank account. In April 2018, another contractor namely Shri Balwant Singh was engaged by the department and the department engaged fresh hands namely Shri Ashok s/o Shri Hans Raj, Shri Vijay Kumar s/o Shri Bhag Singh without affording an opportunity and preference to the petitioner, who was senior, and thus the violation of Section 25-H also took place in the matter. The petitioner has alleged that changing of terms and conditions of his employment unilaterally and later on final termination of his services by the contractor, the respondent no. 2 is contrary, unjustified and arbitrary and against the mandatory provisions of the Industrial Disputes Act hence, claim be allowed and his reinstatement be ordered with all benefits being seniority and continuity in service and full back wages.

3. The contractor chose to remain *exparte* throughout whereas, the Executive Engineer, the respondent no. 1, has resisted and contested the claim on several preliminary objections of maintainability, *locus standi*, limitation, non joinder of necessary party and petitioner's conduct in approaching the court with tainted hands. On merits, the respondent no.1 denied the engagement of the petitioner by the respondent no. 1 department. It is explained that the work of operation and maintenance of LWSS Kandapattan to Dhwali was awarded to Shri Pankaj Kumar Sharma contractor of Village Kalas, P.O. Thouna, Tehsil Sarkaghat, District Mandi, H.P. vide letter No. 21987-93 dated 23.1.2015 for a period of 12 months and he might have engaged the petitioner under him. The petitioner has no direct connection with the respondent no.1 nor the petitioner was engaged at any point of time. The respondent denied that the services of the petitioner were terminated at any point of time and fresh hands were engaged. It is admitted that contract in the year 2018 was awarded to Mr. Balwant Singh and rest of the contents are denied. It is submitted that the claim petition was neither maintainable nor had any merit.

4. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those made in the reply. The petitioner has further averred that the contractors allegedly engaged by respondent no.1 are not registered under the Contract Labour (Regulation & Abolition)

Act, 1970 and since the work of operation and maintenance of pump is regular in nature therefore, regular employment was required but contract between the respondent no.1 and respondent no. 2 is said to be sham and bogus document with a view to frustrate the case of the petitioner and it is submitted that several violations of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 have occurred in this case, and therefore, the petitioner is entitled for the relief as claimed by him.

5. From the pleadings of the parties, following issues have been framed for determination in this case on 13.06.2022:—

1. Whether the termination of services of the petitioner *w.e.f.* 15-04-2017 by the respondents is violation of the provisions contained under section 25-F of the Act, as alleged? .. *OPP.*
2. Whether the respondents have violated the provisions contained under section 25-G and 25-H of the Act, as alleged? .. *OPP.*
3. If issues no.1&2 are proved in affirmative, to what relief, the petitioner is entitled to? .. *OPP.*
4. Whether the claim petition is not maintainable, as alleged? .. *OPR.*
5. Whether the petitioner has no *locus standi* to file the petition, as alleged? .. *OPR.*
6. Whether the claim petition is barred by limitation and suffers from delay and laches, as alleged? .. *OPR.*
7. Whether the claim petition is bad for non-joinder of the necessary parties, as alleged? .. *OPR.*
8. Whether the petitioner has not come to this Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? .. *OPR.*
9. Relief

6. I have heard learned A.R. and learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent no.1 at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

- | | |
|-------------|------------|
| Issue No. 1 | : Negative |
| Issue No. 2 | : Negative |
| Issue No. 3 | : Negative |
| Issue No. 4 | : No |

| | |
|-------------|---|
| Issue No. 5 | : No |
| Issue No. 6 | : Redundant |
| Issue No. 7 | : No |
| Issue No. 8 | : Negative |
| Relief | : Petition is dismissed per operative portion of the Award |

REASONS FOR FINDINGS

ISSUES No. 1 and 8 :

8. Both these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The reference received by this court from the appropriate Government is very material and the court can not go beyond the same as this court acquires the jurisdiction to decide the claim on the basis of this reference. This reference when examined carefully seeks this court to adjudicate the only question as to whether the services of the petitioner were terminated by the respondent nos. 1 and 2 without complying with the provisions of the Industrial Disputes Act or not. The respondent no. 1 is Executive Engineer and the respondent no. 2 is a Government Contractor. It may be stated here that Government Contractor is not an industry nor the Government Contractor does his own work. A Government Contractor works to execute the contracts awarded to him by the Government and therefore, the Government Contractor is bound by the terms and conditions of the contract. If the contract has been entered with Government contractor by the Government for a period of one year, the labour engaged by him to execute the contract can not for any stretch of imagination contend that the very same work be done by the contractor for all the times to come. It is not material whether the works was for the time being or it was of permanent nature but it is the contract that prevails. In case the contract is for one year, then the contract comes to an end as per this terms and conditions. No Contractor can insist any department or Government office that after the contract with him has come to an end, he be permitted to work on another project forever. In case the contractor at the end of the contract releases his labour on the ground that since the contract is over he does not need the service of the labour any more, the labour can not contend that such contractor should work on the same project for next one year. Since the contracts are awarded by way of open tenders thus contracts are governed by terms and conditions thereof, and therefore, no contract can run into perpetuity but every contract has come to an end with the period for which it was executed.

10. In the case in hand, the respondent no. 2 Shri Pankaj Kumar Sharma is a contractor and respondent no.1 is Executive Engineer. It is case of the respondent that in the year 2015 the work of operation and maintenance of LWSS from Kandapattan to Dhawali closing repair and maintenance pumping machinery was awarded to the respondent no. 2. This fact is clear from the statement of Shri Sandeep Kant Sharma (RW1) who has tendered on record the award letter Ext. RW1/B. A careful perusal of this award letter shows that tenders were floated for and opened in the presence of the bidders and negotiations took place on the lowest quoted rate and finally the tender of Shri Pankaj Kumar Sharma, the Government contractor was accepted and the work of operation and maintenance of aforesaid water scheme was awarded to him for one year for Rs.11,30,000/-. There are terms and conditions in this letter and he was supposed to execute the work after 15 days of issue of the award and the work was for definite period. Ext. RW1/C is bill which was sanctioned by the department in favour of Shri Pankaj Kumar Sharma. It is very much

clear from this document that it is not a sham and bogus one as open tenders were invited in which the respondent no.2 was short listed and the award letter was issued. In case any irregularity had taken place while awarding the work to the respondent no.1, rest of the contractors of the area/field would not have sit idle. They would have raised the protest and assailed the award before higher authorities. Since none came forward to challenge this tender/award therefore, the presumption goes that the official work was done by the respondent no. 1 in the manner it was supposed to be done and such contract is neither bogus nor a camouflage in order to help the respondent no. 2 and cheat the petitioner and likewise.

11. When this work allotted to respondent no. 2 was done by him in the year 2014-2015, the respondent no.1 had no reason to engage the services of the petitioner without appointment letter on 15 April, 2015. The 15 April is Himachal Day and all the projects and all the offices are closed in order to celebrate the day. There were no reasons to engage the petitioner on public holiday by the department. No interview has taken place and no such post was advertised and no other witness has been examined by the petitioner to prove that some public appointments took place at the end of Assistant Engineer. When the work was awarded *vide* award letter to a contractor by the department there was no reason for the Assistant Engineer of the office to engage the petitioner and that too without appointment letter and without following the process of appointment. The plea of the petitioner to this effect on the face of it appears as concocted and can not be relied upon.

12. The petitioner has pleaded in para no. 3 of his claim vaguely that terms and conditions of his employment were changed without notice to him. He has neither pleaded any date nor any month when his terms and conditions were changed. On the one hand, he took the plea that no terms and conditions were settled with him and no appointment letter was issued to him, and on the other hand, he claimed that the terms and conditions of his service were altered. He has not placed on record any extract of his saving passbook whereby any payment was made to him directly by the respondent no.1 as his wages. The judicial notice can be taken of the fact by the court that in the year 2015 public money was disbursed through bank accounts and not even a single rupee of the wages was disbursed in cash. Had the Executive Engineer transferred any wages in the bank account of the petitioner, he could have proved this fact on the record by placing extracts of his bank accounts. No evidence has been led by him on the record to show that he has received the wages from the respondent no. 1 at any point of time. It is rather proved that the water scheme was handed over to the respondent no. 2 by respondent no.1 by awarding the tender during period when the petitioner claims that he was engaged by the department. When such is the position it is quite possible that the petitioner might have working with the respondent no. 2 and now he has joint hands the respondent no. 2 to prove that he was the employee of the respondent no. 1. It is for this reason the respondent no. 2 has not chosen to contest the claim.

13. The petitioner while leading his evidence has tendered his affidavit Ext. PW1/A in which he has referred to all the pleadings. He was subjected to cross-examination wherein he has pleaded his ignorance to one suggestion to the effect that workers were engaged by the contractor and not by the department. He could have specifically denied the suggestion. It is easy for anyone to plead that he was engaged by the government in public employment. Such allegations do not serve the purpose unless better evidence is led. In this case had the petitioner been engaged by the Executive Engineer (respondent no.1) he could have proved the receipt of wages in his bank account by leading evidence from the bank. He could have examined any other person who was working with the department at that time on muster roll. The petitioner has not done anything and his self serving testimony does not take his case anywhere.

14. The respondent no.1 on the other hand has examined Shri Sandeep Kant Sharma, Executive Engineer as RW1. He has sworn his affidavit Ext. RW1/A in detail mentioning therein

the manner how the work was awarded to Shri Pankaj Kumar contractor in accordance with the law. He has also sworn his affidavit to the effect that the petitioner must be the worker of the contractor. He was subjected to cross-examination wherein he stated that he was well conversant with the record. He has tendered on record the award letter Ext. RW1/B and bills regarding payment to the contractor Ext. RW1/C. He was examined wherein he stated that he had not placed on the record any document to show that department was registered under the Contract Labour (Regulation and Abolition) Act, 1970. He has also stated that he has also not placed on the record the registration Certificate of Shri Pankaj contractor. He has specifically denied that this award letter was prepared as sham and bogus. When the award letter was carefully examined, it is clear that respondent no. 2 was short-listed after calling for the tenders and this document was not prepared later on. In case, there is violation of any provisions of Contract Labour (Regulation and Abolition) Act, in that case, the petitioner can not be become the workman of respondent no.1 unless it is proved that no such tender was called and no such work was allotted to the respondent no. 2. Law is well settled to this effect by the Hon'ble Supreme Court in **Kirloskar Brothers Limited vs. Ramchandaran & Ors. in Civil Appeal Nos. 8446-8447 of 2022**. Para nos. 4.1 and 4.2 of the aforesaid judgment are as under :—

“4.1.....On going through the entire material on record, no documentary evidence was produced, by which it can be said that the contesting respondents were the employees of the appellant. There is no provision under section 10 of the CLRA Act that the workers/employees employed by the contractor automatically become the employees of the appellant and/or the employees of the contractor shall be entitled for automatic absorption and/or they become the employees of the principal employer. It is to be noted that even the direct control and supervision of the contesting respondents was always with the contractor. There is no evidence on record that any of the respondents were given any benefits, uniform or punching cards by the appellant”.

“4.2. Under the contract and even under the provisions of the CLRA, a duty was cast upon the appellant to pay all statutory dues, including salary of the workmen, payment of PF contribution, and in case of non-payment of the same by the contractor, after making such payment, the same can be deducted from the contractor's bill. Therefore, merely because sometimes the payment of salary was made and/or PF contribution was paid by the appellant, which was due to non-payment of the same by the contractor, the contesting respondents shall not automatically become the employees of the principal employer-appellant herein.....”

15. In case, it is presumed for a while that there are some irregularities in not following the provisions of Contract Labour (Regulation and Abolition) Act in letter and spirit, even then the petitioner automatically does not become the worker of the respondent no.1 and the petitioner is therefore, not entitled to the relief as claimed for by him. The petitioner has himself concealed the true facts from this court. He has claimed vaguely that he was engaged prior to the contract with the respondent no. 2 took place. He has failed to established the same. The petitioner is not established to be the workman of respondent no.1 and therefore, in case his services were terminated by respondent no. 2 on the completion of the work awarded to him by way of award letter, it is not proved that Section 25-F of the Industrial Disputes Act is not applicable and petitioner is not entitled for any such benefit. Hence issues no.1 and 8 are held in negative against the petitioner.

ISSUES No. 2 & 3 :

16. The petitioner has pleaded that fresh hands namely Shri Ashok and Shri Vijay have been engaged by the respondent in the year 2018. Such pleadings are made in para no. 7 of the

claim. It is mentioned in the same that the work was allotted to another contractor Shri Balwant Singh to operate and maintain the pump. When this is so, it can not be said that any regular engagement took place. In case there is post then the entire selection process has to be followed before engagement of any worker in the Government department. Since the petitioner is not proved that he was workman of the respondent no.1 however, provisions of Sections 25-G and 25-H of the Act are not applicable in this case, hence both these issues are also held in negative.

ISSUES No. 4 & 5 :

17. Petition is maintainable as well as the petitioner has the *locus standi* for the reason that it has been filed in support of the reference but it is different matter that the petitioner has failed to establish the claim, hence both these issues are held against the respondents.

ISSUE No. 6 :

18. The respondent no.1 pleaded that the petition is barred by limitation but this issue does not arise in this case and it is redundant.

ISSUE No. 7 :

19. Since allegations have leveled against both the respondents therefore, claim is not bad for non-joinder of necessary parties as no third person is required in this case. Hence this issue is answered in negative.

Relief :

20. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 21st day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 87/2019
Date of Institution : 01-08-2019
Date of Decision : 21-07-2023

Shri Rakesh Kumar s/o Shri Chaman Lal, r/o Village Bahri, P.O. Kot, Tehsil Dharampur,
District Mandi, H.P. . . *Petitioner.*

Versus

1. The Executive Engineer, I.&P.H. Division, Sarkaghat, District Mandi, H.P.
2. Shri Pankaj Kumar Sharma, Government Contractor/ Proprietor, M/s Shiv Shakti Traders, Electrical & Engineering Works, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. . . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri N.L. Kaundal, Ld. A.R.

Shri Rajat Chaudhary, Ld. Adv.
For the Respondent No. 1 : Shri Anil Sharma, Ld. Dy. D.A.

Respondent No. 2 : Exparte proceeded

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether termination of the services of Shri Rakesh Kumar s/o Shri Chaman Lal, r/o Village Bahri, P.O. Kot, Tehsil Dharampur, District Mandi, H.P. by (i) the Executive Engineer I.&P.H. Division, Sarkaghat, District Mandi, H.P. (ii) Shri Pankaj Kumar Sharma, Government Contractor/Proprietor, M/s Shiv Shakti Traders, Electrical & Engineering Works, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 15-04-2017, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner as made out from the claim is that he is a qualified and trained pump operator and his services were engaged against vacant post by Assistant Engineer, IPH Department Dharampur w.e.f. 15.4.2015 and he worked in the aforesaid capacity till 14.4.2017. The respondent no.1 changed his service conditions without prior notice by showing him in the rolls of contractor Shri Pankaj Kumar Sharma. The petitioner used to work under the instructions and supervision of Assistant Engineer and his services were illegally terminated by contractor Shri Pankaj Kumar on 15.4.2017 on instructions of respondent no.1 without complying with the provisions of Section 25-F of the Act. Later on, a regular pump operator was engaged in his place the contractor used to pay him less salary than settled and that too after a gap of three four months by remitting the same in his bank account. In April 2018, another contractor namely Shri Balwant Singh was engaged by the department and the department engaged fresh hands namely Shri Ashok s/o Shri Hans Raj, Shri Vijay Kumar s/o Shri Bhag Singh without affording an opportunity and preference to the petitioner, who was senior, and thus the violation of Section 25-H also took place in the matter. The petitioner has alleged that changing of terms and conditions of his employment unilaterally and later on final termination of his services by the contractor, the respondent no.2 is contrary, unjustified and arbitrary and against the mandatory provisions of the

Industrial Disputes Act hence, claim be allowed and his reinstatement be ordered with all benefits being seniority and continuity in service and full back wages.

3. The contractor chose to remain *exparte* throughout whereas, the Executive Engineer, the respondent no. 1, has resisted and contested the claim on several preliminary objections of maintainability, *locus standi*, limitation, non joinder of necessary party and petitioner's conduct in approaching the court with tainted hands. On merits, the respondent no.1 denied the engagement of the petitioner by the respondent no.1 department. It is explained that the work of operation and maintenance of LWSS Kandapattan to Dhwali was awarded to Shri Pankaj Kumar Sharma contractor of Village Kalas, P.O. Thouna, Tehsil Sarkaghat, District Mandi, H.P. *vide* letter No. 21987-93 dated 23.1.2015 for a period of 12 months and he might have engaged the petitioner under him. The petitioner has no direct connection with the respondent no. 1 nor the petitioner was engaged at any point of time. The respondent denied that the services of the petitioner were terminated at any point of time and fresh hands were engaged. It is admitted that contract in the year 2018 was awarded to Mr. Balwant Singh and rest of the contents are denied. It is submitted that the claim petition was neither maintainable nor had any merit.

4. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those made in the reply. The petitioner has further averred that the contractors allegedly engaged by respondent no.1 are not registered under the Contract Labour (Regulation & Abolition) Act, 1970 and since the work of operation and maintenance of pump is regular in nature therefore, regular employment was required but contract between the respondent no.1 and respondent no. 2 is said to be sham and bogus document with a view to frustrate the case of the petitioner and it is submitted that several violations of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 have occurred in this case, and therefore, the petitioner is entitled for the relief as claimed by him.

5. From the pleadings of the parties, following issues have been framed for determination in this case on 13.06.2022:—

1. Whether the termination of services of the petitioner *w.e.f.* 15-04-2017 by the respondents is violation of the provisions contained under section 25-F of the Act, as alleged? . . . *OPP.*
2. Whether the respondents have violated the provisions contained under section 25-G and 25-H of the Act, as alleged? . . . *OPP.*
3. If issues no.1&2 are proved in affirmative, to what relief, the petitioner is entitled to? . . . *OPP.*
4. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*
5. Whether the petitioner has no *locus standi* to file the petition, as alleged? . . . *OPR.*
6. Whether the claim petition is barred by limitation and suffers from delay and laches, as alleged? . . . *OPR.*
7. Whether the claim petition is bad for non-joinder of the necessary parties, as alleged? . . . *OPR.*

8. Whether the petitioner has not come to this Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . . . *OPR.*

9. Relief

6. I have heard learned A.R. and learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent no.1 at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Negative

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : Redundant

Issue No. 7 : No

Issue No. 8 : Negative

Relief : Petition is **dismissed** per operative portion of the Award

REASONS FOR FINDINGS

ISSUES No. 1 and 8 :

8. Both these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The reference received by this court from the appropriate Government is very material and the court can not go beyond the same as this court acquires the jurisdiction to decide the claim on the basis of this reference. This reference when examined carefully seeks this court to adjudicate the only question as to whether the services of the petitioner were terminated by the respondent nos. 1 and 2 without complying with the provisions of the Industrial Disputes Act or not. The respondent no. 1 is Executive Engineer and the respondent no. 2 is a Government Contractor. It may be stated here that Government Contractor is not an industry nor the Government Contractor does his own work. A Government Contractor works to execute the contracts awarded to him by the Government and therefore, the Government Contractor is bound by the terms and conditions of the contract. If the contract has been entered with Government contractor by the Government for a period of one year, the labour engaged by him to execute the contract can not for any stretch of imagination contend that the very same work be done by the contractor for all the times to come. It is not material whether the works was for the time being or it was of permanent nature but it is the contract that prevails. In case the contract is for one year, then the contract comes to an end as per this terms and conditions. No Contractor can insist any department or Government office that after

the contract with him has come to an end, he be permitted to work on another project forever. In case the contractor at the end of the contract releases his labour on the ground that since the contract is over he does not need the service of the labour any more, the labour can not contend that such contractor should work on the same project for next one year. Since the contracts are awarded by way of open tenders thus contracts are governed by terms and conditions thereof, and therefore, no contract can run into perpetuity but every contract has come to an end with the period for which it was executed.

10. In the case in hand, the respondent no. 2 Shri Pankaj Kumar Sharma is a contractor and respondent no.1 is Executive Engineer. It is case of the respondent that in the year 2015 the work of operation and maintenance of LWSS from Kandapattan to Dhawali closing repair and maintenance pumping machinery was awarded to the respondent no. 2. This fact is clear from the statement of Shri Sandeep Kant Sharma (RW1) who has tendered on record the award letter Ext.RW1/B. A careful perusal of this award letter shows that tenders were floated for and opened in the presence of the bidders and negotiations took place on the lowest quoted rate and finally the tender of Shri Pankaj Kumar Sharma, the Government contractor was accepted and the work of operation and maintenance of aforesaid water scheme was awarded to him for one year for Rs.11,30,000/-. There are terms and conditions in this letter and he was supposed to execute the work after 15 days of issue of the award and the work was for definite period. Ext. RW1/C is bill which was sanctioned by the department in favour of Shri Pankaj Kumar Sharma. It is very much clear from this document that it is not a sham and bogus one as open tenders were invited in which the respondent no. 2 was short listed and the award letter was issued. In case any irregularity had taken place while awarding the work to the respondent no.1, rest of the contractors of the area/field would not have sit idle. They would have raised the protest and assailed the award before higher authorities. Since none came forward to challenge this tender/award therefore, the presumption goes that the official work was done by the respondent no.1 in the manner it was supposed to be done and such contract is neither bogus nor a camouflage in order to help the respondent no. 2 and cheat the petitioner and likewise.

11. When this work allotted to respondent no. 2 was done by him in the year 2014-2015, the respondent no.1 had no reason to engage the services of the petitioner without appointment letter on 15 April 2015. The 15 April is Himachal Day and all the projects and all the offices are closed in order to celebrate the day. There were no reasons to engage the petitioner on public holiday by the department. No interview has taken place and no such post was advertised and no other witness has been examined by the petitioner to prove that some public appointments took place at the end of Assistant Engineer. When the work was awarded *vide* award letter to a contractor by the department there was no reason for the Assistant Engineer of the office to engage the petitioner and that too without appointment letter and without following the process of appointment. The plea of the petitioner to this effect on the face of it appears as concocted and can not be relied upon.

12. The petitioner has pleaded in para no. 3 of his claim vaguely that terms and conditions of his employment were changed without notice to him. He has neither pleaded any date nor any month when his terms and conditions were changed. On the one hand, he took the plea that no terms and conditions were settled with him and no appointment letter was issued to him, and on the other hand, he claimed that the terms and conditions of his service were altered. He has not placed on record any extract of his saving passbook whereby any payment was made to him directly by the respondent no.1 as his wages. The judicial notice can be taken of the fact by the court that in the year 2015 public money was disbursed through bank accounts and not even a single rupee of the wages was disbursed in cash. Had the Executive Engineer transferred any wages in the bank account of the petitioner, he could have proved this fact on the record by placing extracts of his bank accounts. No evidence has been led by him on the record to show that he has

received the wages from the respondent no. 1 at any point of time. It is rather proved that the water scheme was handed over to the respondent no. 2 by respondent no. 1 by awarding the tender during period when the petitioner claims that he was engaged by the department. When such is the position it is quite possible that the petitioner might have working with the respondent no. 2 and now he has joint hands the respondent no. 2 to prove that he was the employee of the respondent no. 1. It is for this reason the respondent no. 2 has not chosen to contest the claim.

13. The petitioner while leading his evidence has tendered his affidavit Ext. PW1/A in which he has referred to all the pleadings. He was subjected to cross-examination wherein he has pleaded his ignorance to one suggestion to the effect that workers were engaged by the contractor and not by the department. He could have specifically denied the suggestion. It is easy for anyone to plead that he was engaged by the government in public employment. Such allegations do not serve the purpose unless better evidence is led. In this case had the petitioner been engaged by the Executive Engineer (respondent no. 1) he could have proved the receipt of wages in his bank account by leading evidence from the bank. He could have examined any other person who was working with the department at that time on muster roll. The petitioner has not done anything and his self serving testimony does not take his case anywhere.

14. The respondent no.1 on the other hand has examined Shri Sandeep Kant Sharma, Executive Engineer as RW1. He has sworn his affidavit Ext. RW1/A in detail mentioning therein the manner how the work was awarded to Shri Pankaj Kumar contractor in accordance with the law. He has also sworn his affidavit to the effect that the petitioner must be the worker of the contractor. He was subjected to cross-examination wherein he stated that he was well conversant with the record. He has tendered on record the award letter Ext. RW1/B and bills regarding payment to the contractor Ext. RW1/C. He was examined wherein he stated that he had not placed on the record any document to show that department was registered under the Contract Labour (Regulation and Abolition) Act, 1970. He has also stated that he has also not placed on the record the registration Certificate of Shri Pankaj contractor. He has specifically denied that this award letter was prepared as sham and bogus. When the award letter was carefully examined, it is clear that respondent no. 2 was short-listed after calling for the tenders and this document was not prepared later on. In case, there is violation of any provisions of Contract Labour (Regulation and Abolition) Act, in that case, the petitioner can not become the workman of respondent no.1 unless it is proved that no such tender was called and no such work was allotted to the respondent no. 2. Law is well settled to this effect by the Hon'ble Supreme Court in **Kirloskar Brothers Limited vs. Ramchandaran & Ors. in Civil Appeal Nos. 8446-8447 of 2022**. Para nos. 4.1 and 4.2 of the aforesaid judgment are as under :

“4.1.....On going through the entire material on record, no documentary evidence was produced, by which it can be said that the contesting respondents were the employees of the appellant. There is no provision under Section 10 of the CLRA Act that the workers/employees employed by the contractor automatically become the employees of the appellant and/or the employees of the contractor shall be entitled for automatic absorption and/or they become the employees of the principal employer. It is to be noted that even the direct control and supervision of the contesting respondents was always with the contractor. There is no evidence on record that any of the respondents were given any benefits, uniform or punching cards by the appellant”.

“4.2. Under the contract and even under the provisions of the CLRA, a duty was cast upon the appellant to pay all statutory dues, including salary of the workmen, payment of PF contribution, and in case of non-payment of the same by the contractor, after making such payment, the same can be deducted from the

contractor's bill. Therefore, merely because sometimes the payment of salary was made and/or PF contribution was paid by the appellant, which was due to non-payment of the same by the contractor, the contesting respondents shall not automatically become the employees of the principal employer-appellant herein.....”

15. In case, it is presumed for a while that there are some irregularities in not following the provisions of Contract Labour (Regulation and Abolition) Act in letter and spirit, even then the petitioner automatically does not become the worker of the respondent no.1 and the petitioner is therefore, not entitled to the relief as claimed for by him. The petitioner has himself concealed the true facts from this court. He has claimed vaguely that he was engaged prior to the contract with the respondent no. 2 took place. He has failed to establish the same. The petitioner is not established to be the workman of respondent no.1 and therefore, in case his services were terminated by respondent no. 2 on the completion of the work awarded to him by way of award letter, it is not proved that Section 25-F of the Industrial Disputes Act is not applicable and petitioner is not entitled for any such benefit. Hence issues no.1 and 8 are held in negative against the petitioner.

ISSUES No. 2 & 3 :

16. The petitioner has pleaded that fresh hands namely Shri Ashok and Shri Vijay have been engaged by the respondent in the year 2018. Such pleadings are made in para no. 7 of the claim. It is mentioned in the same that the work was allotted to another contractor Shri Balwant Singh to operate and maintain the pump. When this is so, it can not be said that any regular engagement took place. In case there is post then the entire selection process has to be followed before engagement of any worker in the Government department. Since the petitioner is not proved that he was workman of the respondent no.1 however, provisions of Sections 25-G and 25-H of the Act are not applicable in this case, hence both these issues are also held in negative.

ISSUES No. 4 & 5 :

17. Petition is maintainable as well as the petitioner has the *locus standi* for the reason that it has been filed in support of the reference but it is different matter that the petitioner has failed to establish the claim, hence both these issues are held against the respondents.

ISSUE No. 6 :

18. The respondent no. 1 pleaded that the petition is barred by limitation but this issue does not arise in this case and it is redundant.

ISSUE No. 7 :

19. Since allegations have leveled against both the respondents therefore, claim is not bad for non-joinder of necessary parties as no third person is required in this case. Hence this issue is answered in negative.

Relief :

20. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 21st day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 86/2019
Date of Institution : 01-08-2019
Date of Decision : 21-07-2023

Shri Sushil Kumar s/o Shri Hari Chand, r/o Village Fiher, P.O. Sari, Tehsil Dharampur,
District Mandi, H.P. . . *Petitioner.*

Versus

1. The Executive Engineer, I.&P.H. Division, Sarkaghat, District Mandi, H.P.
2. Shri Pankaj Kumar Sharma, Government Contractor/ Proprietor, M/s Shiv Shakti Traders, Electrical & Engineering Works, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. . . Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri N.L. Kaundal, Ld. A.R.
Sh. Rajat Chaudhary, Ld. Adv.
For the Respondent No. 1 : Shri Anil Sharma, Ld. Dy. D.A.
Respondent No. 2 : Exparte Proceeded

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether termination of the services of Shri Sushil Kumar s/o Shri Hari Chand, r/o Village Fiher, P.O. Sari, Tehsil Dharampur, District Mandi, H.P. by (i) the Executive Engineer, I. & P.H. Division, Sarkaghat, District Mandi, H.P. (ii) Shri Pankaj Kumar Sharma, Government Contractor/Proprietor, M/s Shiv Shakti Traders, Electrical & Engineering Works, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. w.e.f.

01-04-2018, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. The case of the petitioner as made out from the claim is that he is a qualified and trained pump operator and his services were engaged against vacant post by Assistant Engineer, IPH Department Dharampur *w.e.f.* 15.4.2015 and he worked in the aforesaid capacity till 31.3.2018. The respondent no.1 changed his service conditions without prior notice by showing him in the rolls of contractor Shri Pankaj Kumar Sharma. The petitioner used to work under the instructions and supervision of Assistant Engineer and his services were illegally terminated by contractor Shri Pankaj Kumar on 15.4.2017 on instructions of respondent no.1 without complying with the provisions of Section 25-F of the Act. Later on, a regular pump operator was engaged in his place the contractor used to pay him less salary than settled and that too after a gap of three four months by remitting the same in his bank account. In April 2018, another contractor namely Shri Balwant Singh was engaged by the department and the department engaged fresh hands namely Shri Ashok s/o Shri Hans Raj, Shri Vijay Kumar s/o Shri Bhag Singh without affording an opportunity and preference to the petitioner, who was senior, and thus the violation of Section 25-H also took place in the matter. The petitioner has alleged that changing of terms and conditions of his employment unilaterally and later on final termination of his services by the contractor, the respondent no. 2 is contrary, unjustified and arbitrary and against the mandatory provisions of the Industrial Disputes Act hence, claim be allowed and his reinstatement be ordered with all benefits being seniority and continuity in service and full back wages.

3. The contractor chose to remain *exparte* throughout whereas, the Executive Engineer, the respondent no. 1, has resisted and contested the claim on several preliminary objections of maintainability, *locus standi*, limitation, non-joinder of necessary party and petitioner's conduct in approaching the court with tainted hands. On merits, the respondent no.1 denied the engagement of the petitioner by the respondent no. 1 department. It is explained that the work of operation and maintenance of LWSS Kandapattan to Dhwali was awarded to Shri Pankaj Kumar Sharma contractor of Village Kalas, P.O. Thouna, Tehsil Sarkaghat, District Mandi, H.P. *vide* letter No.21987-93 dated 23.1.2015 for a period of 12 months and he might have engaged the petitioner under him. The petitioner has no direct connection with the respondent no.1 nor the petitioner was engaged at any point of time. The respondent denied that the services of the petitioner were terminated at any point of time and fresh hands were engaged. It is admitted that contract in the year 2018 was awarded to Mr. Balwant Singh and rest of the contents are denied. It is submitted that the claim petition was neither maintainable nor had any merit.

4. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those made in the reply. The petitioner has further averred that the contractors allegedly engaged by respondent no. 1 are not registered under the Contract Labour (Regulation & Abolition) Act, 1970 and since the work of operation and maintenance of pump is regular in nature therefore, regular employment was required but contract between the respondent no.1 and respondent no. 2 is said to be sham and bogus document with a view to frustrate the case of the petitioner and it is submitted that several violations of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 have occurred in this case, and therefore, the petitioner is entitled for the relief as claimed by him.

5. From the pleadings of the parties, following issues have been framed for determination in this case on 13.06.2022:—

1. Whether the termination of services of the petitioner *w.e.f.* 1.4.2018 by the respondents is violation of the provisions contained under section 25-F of the Act, as alleged?

.. *OPP.*

2. Whether the respondents have violated the provisions contained under section 25-G and 25-H of the Act, as alleged? . . . *OPP.*
3. If issues no.1 & 2 are proved in affirmative, to what relief, the petitioner is entitled to? . . . *OPP.*
4. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*
5. Whether the petitioner has no *locus standi* to file the petition, as alleged? . . . *OPR.*
6. Whether the claim petition is barred by limitation and suffers from delay and laches, as alleged? . . . *OPR.*
7. Whether the claim petition is bad for non-joinder of the necessary parties, as alleged? . . . *OPR.*
8. Whether the petitioner has not come to this Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . . . *OPR.*
9. Relief

6. I have heard learned A.R. and learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent no.1 at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

| | |
|-------------|---|
| Issue No. 1 | : Negative |
| Issue No. 2 | : Negative |
| Issue No. 3 | : Negative |
| Issue No. 4 | : No |
| Issue No. 5 | : No |
| Issue No. 6 | : Redundant |
| Issue No. 7 | : No |
| Issue No. 8 | : Negative |
| Relief | : Petition is dismissed per operative portion of the Award |

REASONS FOR FINDINGS.

ISSUES No.1 and 8 :

8. Both these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The reference received by this court from the appropriate Government is very material and the court can not go beyond the same as this court acquires the jurisdiction to decide the claim on the basis of this reference. This reference when examined carefully seeks this court to adjudicate the only question as to whether the services of the petitioner were terminated by the respondent nos.1 and 2 without complying with the provisions of the Industrial Disputes Act or not. The respondent no.1 is Executive Engineer and the respondent no. 2 is a Government Contractor. It may be stated here that Government Contractor is not an industry nor the Government Contractor does his own work. A Government Contractor works to execute the contracts awarded to him by the Government and therefore, the Government Contractor is bound by the terms and conditions of the contract. If the contract has been entered with Government contractor by the Government for a period of one year, the labour engaged by him to execute the contract can not for any stretch of imagination contend that the very same work be done by the contractor for all the times to come. It is not material whether the works was for the time being or it was of permanent nature but it is the contract that prevails. In case the contract is for one year, then the contract comes to an end as per this terms and conditions. No Contractor can insist any department or Government office that after the contract with him has come to an end, he be permitted to work on another project forever. In case the contractor at the end of the contract releases his labour on the ground that since the contract is over he does not need the service of the labour any more, the labour can not contend that such contractor should work on the same project for next one year. Since the contracts are awarded by way of open tenders thus contracts are governed by terms and conditions thereof, and therefore, no contract can run into perpetuity but every contract has come to an end with the period for which it was executed.

10. In the case in hand, the respondent no. 2 Shri Pankaj Kumar Sharma is a contractor and respondent no.1 is Executive Engineer. It is case of the respondent that in the year 2015 the work of operation and maintenance of LWSS from Kandapattan to Dhawali closing repair and maintenance pumping machinery was awarded to the respondent no.2. This fact is clear from the statement of Shri Sandeep Kant Sharma (RW1) who has tendered on record the award letter Ext. RW1/B. A careful perusal of this award letter shows that tenders were floated and opened in the presence of the bidders and negotiations took place on the lowest quoted rate and finally the tender of Shri Pankaj Kumar Sharma, the Government contractor was accepted and the work of operation and maintenance of aforesaid water scheme was awarded to him for one year for Rs.11,30,000/-. There are terms and conditions in this letter and he was supposed to execute the work after 15 days of issue of the award and the work was for definite period. Ex. RW1/C is details of the bills which was sanctioned by the department in favour of Shri Pankaj Kumar Sharma. It is very much clear from this document that it is not a sham and bogus one as open tenders were invited in which the respondent no. 2 was short listed and the award letter was issued. In case any irregularity had taken place while awarding the work to the respondent no.1, rest of the contractors of the area/field would not have sit idle. They would have raised the protest and assailed the award before higher authorities. Since none came forward to challenge this tender/award therefore, the presumption goes that the official work was done by the respondent no.1 in the manner it was supposed to be done and such contract is neither bogus nor a camouflage in order to help the respondent no. 2 and cheat the petitioner and others.

11. When this work allotted to respondent no. 2 was done by him in the year 2014-2015, the respondent no.1 had no reason to engage the services of the petitioner without appointment letter on 15 April 2015. The 15 April is Himachal Day and all the offices are closed in order to celebrate the day. There were no reasons to engage the petitioner on public holiday by the department. No interview has taken place and no such post was advertised and no other witness has been examined by the petitioner to prove that some public appointments took place through Assistant Engineer. When the work was awarded *vide* award letter to a contractor by the department there was no reason for the Assistant Engineer of the office to engage the petitioner and

that too without appointment letter and without following the process of appointment. The plea of the petitioner to this effect on the face of it appears as concocted and can not be relied upon.

12. The petitioner has pleaded in para no. 3 of his claim vaguely that terms and conditions of his employment were changed without notice to him. He has neither pleaded any date nor any month when his terms and conditions were changed. On the one hand, he has taken the plea that no terms and conditions were settled with him and no appointment letter was issued to him, and on the other hand, he claimed that the terms and conditions of his service were altered. He has not placed on record any extract of his saving passbook whereby any payment was made to him directly by the respondent no.1 as his wages. The judicial notice can be taken of the fact by the court that in the year 2015 public money was disbursed through bank accounts and not even a single rupee of the wages was disbursed in cash. Had the Executive Engineer transferred wages in the bank account of the petitioner, he could have proved this fact on the record by placing extracts of his bank accounts. No evidence has been led by him on the record to show that he has received the wages from the respondent no. 1 at any point of time. It is rather proved that the water scheme was handed over to the respondent no. 2 by respondent no.1 by awarding the tender much before the period when the petitioner claims that he was engaged by the department. The award letter was issued on 23.01.2015 in favour of the contractor, and there was no reason to engage the services of the petitioner. When such is the position it is quite possible that the petitioner might have working with the respondent no. 2 and now he has joint hands the respondent no. 2 to prove that he was the employee of the respondent no. 1. It is for this reason the respondent no.2 has not chosen to contest the claim.

13. The petitioner while leading his evidence has tendered his affidavit Ext. PW1/A in which he has referred to all the pleadings. He was subjected to cross-examination wherein he has admitted that the work was awarded by the respondent no. 1 to respondent no. 2. he states that his services were engaged by the respondent no. 1 initially. If this statement is taken into consideration, then his services were engaged prior to 15 January 2015, the date of the Award. If this fact is taken into account then the plea of the petitioner that he was engaged on 15.04.2015 are falsified. In this case had the petitioner been engaged by the Executive Engineer (respondent no.1) he could have proved the receipt of wages in his bank account by leading evidence from the bank. He could have examined any other person who was working with the department at that time on muster roll. The petitioner has not done anything and his self serving testimony does not take his case anywhere.

14. The respondent no.1 on the other hand has examined Shri Sandeep Kant Sharma, Executive Engineer as RW1. He has sworn his affidavit Ext. RW1/A in detail mentioning therein the manner how the work was awarded to Shri Pankaj Kumar contractor in accordance with the law. He has also sworn his affidavit to the effect that the petitioner must be the worker of the contractor. He was subjected to cross-examination wherein he stated that he was well conversant with the record. He has tendered on record the award letter Ext.RW1/B and bills regarding payment to the contractor as Ext. RW1/C. He was examined wherein he stated that he had not placed on the record any document to show that department was registered under the Contract Labour (Regulation and Abolition) Act, 1970. He has also stated that he has also not placed on the record the registration Certificate of Shri Pankaj contractor. He has specifically denied that this award letter was prepared as sham and bogus. When the award letter was carefully examined, it is clear that respondent no. 2 was short-listed after calling for the tenders and this document was not prepared later on. In case, there is violation of any provisions of Contract Labour (Regulation and Abolition) Act, in that case, the petitioner can not be become the workman of respondent no.1 unless it is proved that no such tender was called and no such work was allotted to the respondent no. 2. Law is well settled to this effect by the Hon'ble Supreme Court in **Kirloskar Brothers Limited vs. Ramchandaran & Ors. in Civil Appeal Nos. 8446-8447 of 2022 decided on 05.12.2022**. Para nos. 4.1 and 4.2 of the aforesaid judgment are as under :—

“4.1.....On going through the entire material on record, no documentary evidence was produced, by which it can be said that the contesting respondents were the employees of the appellant. There is no provision under section 10 of the CLRA Act that the workers/employees employed by the contractor automatically become the employees of the appellant and/or the employees of the contractor shall be entitled for automatic absorption and/or they become the employees of the principal employer. It is to be noted that even the direct control and supervision of the contesting respondents was always with the contractor. There is no evidence on record that any of the respondents were given any benefits, uniform or punching cards by the appellant”.

“4.2. Under the contract and even under the provisions of the CLRA, a duty was cast upon the appellant to pay all statutory dues, including salary of the workmen, payment of PF contribution, and in case of non-payment of the same by the contractor, after making such payment, the same can be deducted from the contractor’s bill. Therefore, merely because sometimes the payment of salary was made and/or PF contribution was paid by the appellant, which was due to non-payment of the same by the contractor, the contesting respondents shall not automatically become the employees of the principal employer-appellant herein.....”

15. In case, it is presumed for a while that there are some irregularities in not following the provisions of Contract Labour (Regulation and Abolition) Act in letter and spirit, even then the petitioner automatically does not become the worker of the respondent no.1 and the petitioner is therefore, not entitled to the relief as claimed for by him. The petitioner has himself concealed the true facts from this court. He has claimed vaguely that he was engaged prior to the contract with the respondent no. 2 took place. He has failed to established the same. The petitioner is not proved to be the workman of respondent no.1 and therefore, in case his services were terminated by respondent no. 2 on the completion of the work awarded to him by way of award letter, it is not proved that Section 25-F of the Industrial Disputes Act was not applicable to the present case and petitioner is not entitled for any such benefit. Hence issues no.1 and 8 are held in negative against the petitioner.

ISSUES No. 2 & 3 :

16. The petitioner has pleaded that fresh hands namely Shri Ashok and Shri Vijay have been engaged by the respondent in the year 2018. Such pleadings are made in para no.7 of the claim. It is mentioned in the same that the work was allotted to another contractor Shri Balwant Singh to operate and maintain the pump. When this is so, it can not be said that any regular engagement took place. In case there is post then the entire selection process has to be followed before engagement of any worker in the Government department. Since the petitioner is not proved that he was workman of the respondent no.1 however, provisions of Sections 25-G and 25-H of the Act are not applicable in this case, hence both these issues are also held in negative.

ISSUES No. 4 & 5 :

17. Petition is maintainable as well as the petitioner has the *locus standi* for the reason that it has been filed in support of the reference but it is different matter that the petitioner has failed to establish the claim, hence both these issues are held against the respondents.

ISSUE No. 6 :

18. The respondent no.1 pleaded that the petition is barred by limitation but this issue does not arise in this case and it is held as redundant.

ISSUE No. 7 :

19. Since allegations have leveled against both the respondents therefore, claim is not bad for non-joinder of necessary parties as no third person is required in this case. Hence this issue is answered in negative.

Relief :

20. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 21st day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 85/2019
Date of Institution : 01-08-2019
Date of Decision : 21-07-2023

Shri Bhawani Singh S/O Shri Prem Singh, R/O Village Bahri, P.O. Kot, Tehsil Dharampur,
District Mandi, H.P. . . *Petitioner.*

Versus

1. The Executive Engineer, I & P.H. Division, Sarkaghat, District Mandi, H.P.
2. Shri Pankaj Kumar Sharma, Government Contractor/ Proprietor, M/s Shiv Shakti Traders, Electrical & Engineering Works, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri N.L. Kaundal, Ld. A.R.

Shri Rajat Chaudhary, Ld. Adv.

For the Respondent No. 1 : Shri Anil Sharma, Ld. Dy. D.A.

Respondent No. 2 : Exparte proceeded.

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether termination of the services of Shri Bhawani Singh s/o Shri Prem Singh, r/o Village Bahri, P.O. Kot, Tehsil Dharampur, District Mandi, H.P. by (i) the Executive Engineer I&P.H. Division, Sarkaghat, District Mandi, H.P. (ii) Shri Pankaj Kumar Sharma, Government Contractor/Proprietor, M/s Shiv Shakti Traders, Electrical & Engineering Works, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 15-04-2017, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner as made out from the claim is that he is a qualified and trained pump operator and his services were engaged against vacant post by Assistant Engineer, IPH Department Dharampur w.e.f. 15.4.2015 and he worked in the aforesaid capacity till 14.4.2017. The respondent No.1 changed his service conditions without prior notice by showing him in the rolls of contractor Shri Pankaj Kumar Sharma. The petitioner used to work under the instructions and supervision of Assistant Engineer and his services were illegally terminated by contractor Shri Pankaj Kumar on 15.4.2017 on instructions of respondent No.1 without complying with the provisions of Section 25-F of the Act. Later on, a regular pump operator was engaged in his place the contractor used to pay him less salary than settled and that too after a gap of three four months by remitting the same in his bank account. In April 2018, another contractor namely Shri Balwant Singh was engaged by the department and the department engaged fresh hands namely Shri Ashok s/o Shri Hans Raj, Shri Vijay Kumar s/o Shri Bhag Singh without affording an opportunity and preference to the petitioner, who was senior, and thus the violation of Section 25-H also took place in the matter. The petitioner has alleged that changing of terms and conditions of his employment unilaterally and later on final termination of his services by the contractor, the respondent no. 2 is contrary, unjustified and arbitrary and against the mandatory provisions of the Industrial Disputes Act hence, claim be allowed and his reinstatement be ordered with all benefits being seniority and continuity in service and full back wages.

3. The contractor chose to remain exparte throughout whereas, the Executive Engineer, the respondent No. 1, has resisted and contested the claim on several preliminary objections of maintainability, *locus standi*, limitation, non joinder of necessary party and petitioner's conduct in approaching the court with tainted hands. On merits, the respondent No.1 denied the engagement of the petitioner by the respondent No.1 department. It is explained that the work of operation and maintenance of LWSS Kandapattan to Dhwali was awarded to Shri Pankaj Kumar Sharma contractor of Village Kalas, P.O. Thouna, Tehsil Sarkaghat, District Mandi, H.P. vide letter No. 21987-93 dated 23.1.2015 for a period of 12 months and he might have engaged the petitioner under him. The petitioner has no direct connection with the respondent no.1 nor the petitioner was engaged at any point of time. The respondent denied that the services of the petitioner were terminated at any point of time and fresh hands were engaged. It is admitted that contract in the year 2018 was awarded to Mr. Balwant Singh and rest of the contents are denied. It is submitted that the claim petition was neither maintainable nor had any merit.

4. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those made in the reply. The petitioner has further averred that the contractors allegedly engaged by respondent No.1 are not registered under the Contract Labour (Regulation & Abolition) Act, 1970 and since the work of operation and maintenance of pump is regular in nature therefore, regular employment was required but contract between the respondent No.1 and respondent no. 2 is said to be sham and bogus document with a view to frustrate the case of the petitioner and it is submitted that several violations of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 have occurred in this case, and therefore, the petitioner is entitled for the relief as claimed by him.

5. From the pleadings of the parties, following issues have been framed for determination in this case on 13.06.2022:—

1. Whether the termination of services of the petitioner w.e.f. 15-04-2017 by the respondents is violation of the provisions contained under Section 25-F of the Act, as alleged? . . . *OPP.*
2. Whether the respondents have violated the provisions contained under Section 25-G and 25-H of the Act, as alleged? . . . *OPP.*
3. If issues No.1 & 2 are proved in affirmative, to what relief, the petitioner is entitled to? . . . *OPP.*
4. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*
5. Whether the petitioner has no locus standi to file the petition, as alleged? . . . *OPR.*
6. Whether the claim petition is barred by limitation and suffers from delay and laches, as alleged? . . . *OPR.*
7. Whether the claim petition is bad for non-joinder of the necessary parties, as alleged? . . . *OPR.*
8. Whether the petitioner has not come to this Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . . . *OPR.*

Relief

6. I have heard learned A.R. and learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent No.1 at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

Issue No. 1 : Negative

Issue No. 2 : Negative

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| Issue No. 3 | : Negative |
| Issue No. 4 | : No |
| Issue No. 5 | : No |
| Issue No. 6 | : Redundant |
| Issue No. 7 | : No |
| Issue No. 8 | : Negative |
| Relief | : Petition is dismissed per operative portion of the Award. |

REASONS FOR FINDINGS

ISSUES No. 1 and 8 :

8. Both these issues are taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The reference received by this court from the appropriate Government is very material and the court can not go beyond the same as this court acquires the jurisdiction to decide the claim on the basis of this reference. This reference when examined carefully seeks this court to adjudicate the only question as to whether the services of the petitioner were terminated by the respondent Nos.1 and 2 without complying with the provisions of the Industrial Disputes Act or not. The respondent No.1 is Executive Engineer and the respondent No. 2 is a Government Contractor. It may be stated here that Government Contractor is not an industry nor the Government Contractor does his own work. A Government Contractor works to execute the contracts awarded to him by the Government and therefore, the Government Contractor is bound by the terms and conditions of the contract. If the contract has been entered with Government contractor by the Government for a period of one year, the labour engaged by him to execute the contract can not for any stretch of imagination contend that the very same work be done by the contractor for all the times to come. It is not material whether the works was for the time being or it was of permanent nature but it is the contract that prevails. In case the contract is for one year, then the contract comes to an end as per this terms and conditions. No Contractor can insist any department or Government office that after the contract with him has come to an end, he be permitted to work on another project forever. In case the contractor at the end of the contract releases his labour on the ground that since the contract is over he does not need the service of the labour any more, the labour can not contend that such contractor should work on the same project for next one year. Since the contracts are awarded by way of open tenders thus contracts are governed by terms and conditions thereof, and therefore, no contract can run into perpetuity but every contract has come to an end with the period for which it was executed.

10. In the case in hand, the respondent No.2 Shri Pankaj Kumar Sharma is a contractor and respondent No.1 is Executive Engineer. It is case of the respondent that in the year 2015 the work of operation and maintenance of LWSS from Kandapattan to Dhawali closing repair and maintenance pumping machinery was awarded to the respondent No. 2. This fact is clear from the statement of Shri Vivek Hazri (RW1) who has tendered on record the award letter Ext. RW1/B. A careful perusal of this award letter shows that tenders were floated for and opened in the presence of the bidders and negotiations took place on the lowest quoted rate and finally the tender of Shri Pankaj Kumar Sharma, the Government contractor was accepted and the work of operation and

maintenance of aforesaid water scheme was awarded to him for one year for Rs.11,30,000/-. There are terms and conditions in this letter and he was supposed to execute the work after 15 days of issue of the award and the work was for definite period. Ex.RW1/C is the details of the work. Ext. RW1/D is bill which was sanctioned by the department in favour of Shri Pankaj Kumar Sharma. It is very much clear from this document that it is not a sham and bogus one as open tenders were invited in which the respondent No. 2 was short listed and the award letter was issued. In case any irregularity had taken place while awarding the work to the respondent No.1, rest of the contractors of the area/field would not have sit idle. They would have raised the protest and assailed the award before higher authorities. Since none came forward to challenge this tender/award therefore, the presumption goes that the official work was done by the respondent No.1 in the manner it was supposed to be done and such contract is neither bogus nor a camouflage in order to help the respondent No. 2 and cheat the petitioner and likewise.

11. When this work allotted to respondent No. 2 was done by him in the year 2014-2015, the respondent No.1 had no reason to engage the services of the petitioner without appointment letter on 15 April 2015. The 15 April is Himachal Day and all the projects and all the offices are closed in order to celebrate the day. There were no reasons to engage the petitioner on public holiday by the department. No interview has taken place and no such post was advertised and no other witness has been examined by the petitioner to prove that some public appointments took place at the end of Assistant Engineer. When the work was awarded *vide* award letter to a contractor by the department there was no reason for the Assistant Engineer of the office to engage the petitioner and that too without appointment letter and without following the process of appointment. The plea of the petitioner to this effect on the face of it appears as concocted and can not be relied upon.

12. The petitioner has pleaded in para No. 3 of his claim vaguely that terms and conditions of his employment were changed without notice to him. He has neither pleaded any date nor any month when his terms and conditions were changed. On the one hand, he took the plea that no terms and conditions were settled with him and no appointment letter was issued to him, and on the other hand, he claimed that the terms and conditions of his service were altered. He has not placed on record any extract of his saving passbook whereby any payment was made to him directly by the respondent No.1 as his wages. The judicial notice can be taken of the fact by the court that in the year 2015 public money was disbursed through bank accounts and not even a single rupee of the wages was disbursed in cash. Had the Executive Engineer transferred any wages in the bank account the petitioner, he could have proved this fact on the record by placing extracts of his bank accounts. No evidence has been led by him on the record to show that he has received the wages from the respondent no. 1 at any point of time. It is rather proved that the water scheme was handed over to the respondent No.2 by respondent No.1 by awarding the tender during period when the petitioner claims that he was engaged by the department. When such is the position it is quite possible that the petitioner might have working with the respondent no.2 and now he has joint hands the respondent No.2 to prove that he was the employee of the respondent No. 1. It is for this reason the respondent No.2 has not chosen to contest the claim.

13. The petitioner while leading his evidence has tendered his affidavit Ext. PW1/A in which he has referred to all the pleadings. He was subjected to cross-examination wherein he has pleaded his ignorance to one suggestion to the effect that workers were engaged by the contractor and not by the department. He could have specifically denied the suggestion. It is easy for anyone to plead that he was engaged by the government in public employment. Such allegations do not serve the purpose unless better evidence is led. In this case had the petitioner been engaged by the Executive Engineer (respondent No.1) he could have proved the receipt of wages in his bank account by leading evidence from the bank. He could have examined any other person who was working with the department at that time on muster roll. The petitioner has not done anything and his self serving testimony does not take his case anywhere.

14. The respondent No.1 on the other hand has examined Shri Vivek Hazri, Executive Engineer as RW1. He has sworn his affidavit Ext. RW1/A in detail mentioning therein the manner how the work was awarded to Shri Pankaj Kumar contractor in accordance with the law. He has also sworn his affidavit to the effect that the petitioner must be the worker of the contractor. He was subjected to cross-examination wherein he stated that he was well conversant with the record. He has tendered on record the award letter Ext. RW1/B and bills regarding payment to the contractor Ext. RW1/C and Ext. RW1/D. He was examined wherein he stated that he had not placed on the record any document to show that department was registered under the Contract Labour (Regulation and Abolition) Act, 1970. He has also stated that he has also not placed on the record the registration Certificate of Shri Pankaj contractor. He has specifically denied that this award letter was prepared as sham and bogus. When the award letter was carefully examined, it is clear that respondent No. 2 was short-listed after calling for the tenders and this document was not prepared later on. In case, there is violation of any provisions of Contract Labour (Regulation and Abolition) Act, in that case, the petitioner can not become the workman of respondent No.1 unless it is proved that no such tender was called and no such work was allotted to the respondent No. 2. Law is well settled to this effect by the Hon'ble Supreme Court in **Kirloskar Brothers Limited vs. Ramchandaran & Ors. in Civil Appeal Nos. 8446-8447 of 2022**. Para Nos. 4.1 and 4.2 of the aforesaid judgment are as under :

“4.1.....On going through the entire material on record, no documentary evidence was produced, by which it can be said that the contesting respondents were the employees of the appellant. There is no provision under Section 10 of the CLRA Aact that the workers/employees employed by the contractor automatically become the employees of the appellant and/or the employees of the contractor shall be entitled for automatic absorption and/or they become the employees of the principal employer. It is to be noted that even the direct control and supervision of the contesting respondents was always with the contractor. There is no evidence on record that any of the respondents were given any benefits, uniform or punching cards by the appellant”.

“4.2. Under the contract and even under the provisions of the CLRA, a duty was cast upon the appellant to pay all statutory dues, including salary of the workmen, payment of PF contribution, and in case of non-payment of the same by the contractor, after making such payment, the same can be deducted from the contractor's bill. Therefore, merely because sometimes the payment of salary was made and/or PF contribution was paid by the appellant, which was due to non-payment of the same by the contractor, the contesting respondents shall not automatically become the employees of the principal employer-appellant herein.....”

15. In case, it is presumed for a while that there are some irregularities in not following the provisions of Contract Labour (Regulation and Abolition) Act in letter and spirit, even then the petitioner automatically does not become the worker of the respondent No.1 and the petitioner is therefore, not entitled to the relief as claimed for by him. The petitioner has himself concealed the true facts from this court. He has claimed vaguely that he was engaged prior to the contract with the respondent no. 2 took place. He has failed to established the same. The petitioner is not established to be the workman of respondent No.1 and therefore, in case his services were terminated by respondent No. 2 on the completion of the work awarded to him by way of award letter, it is not proved that Section 25-F of the Industrial Disputes Act is not applicable and petitioner is not entitled for any such benefit. Hence issues No.1 and 8 are held in negative against the petitioner.

ISSUES No. 2 & 3 :

16. The petitioner has pleaded that fresh hands namely Shri Ashok and Shri Vijay have been engaged by the respondent in the year 2018. Such pleadings are made in para No. 7 of the claim. It is mentioned in the same that the work was allotted to another contractor Shri Balwant Singh to operate and maintain the pump. When this is so, it can not be said that any regular engagement took place. In case there is post then the entire selection process has to be followed before engagement of any worker in the Government department. Since the petitioner is not proved that he was workman of the respondent No.1 however, provisions of Sections 25-G and 25-H of the Act are not applicable in this case, hence both these issues are also held in negative.

ISSUES No. 4 & 5 :

17. Petition is maintainable as well as the petitioner has the *locus standi* for the reason that it has been filed in support of the reference but it is different matter that the petitioner has failed to establish the claim, hence both these issues are held against the respondents.

ISSUE No.6 :

18. The respondent No.1 pleaded that the petition is barred by limitation but this issue does not arise in this case and it is redundant.

ISSUE No.7 :

19. Since allegations have leveled against both the respondents therefore, claim is not bad for non joinder of necessary parties as no third person is required in this case. Hence this issue is answered in negative.

Relief :

20. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 21st day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 79/2017
Date of Institution : 29-3-2017
Date of Decision : 21-07-2023

Shri Narpat Ram s/o Shri Mani Ram, r/o Village Saroni, P.O. Jarol, Tehsil Sunder Nagar,
District Mandi, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.K. Sharma, Ld. Adv.

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether time to time termination of services of Shri Narpat Ram s/o Shri Mani Ram, r/o Village Saroni, P.O. Jarol, Tehsil Sunder Nagar, District Mandi, H.P. during year, 2002 to year 2011 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as made out from the claim is to the effect that he was engaged as daily rated forest worker by the respondent department in Suket Division *w.e.f.* 1.10.1999 and he was given fictional breaks *w.e.f.* 2002 to 2011. After the year 2012 he was permitted to work continuously and many juniors to him including Shri Angat Kumar shown at serial no.99 of the seniority list were retained and regularized prior to him. No fictional breaks were given to junior workmen shown by him in para No. 3 of (17 in numbers). The petitioner requested the respondent department time and again not to grant him fictional breaks but department lingered on the matter on one or other pretext. In the year 2015, the department refused to condone the fictional breaks and the petitioner, therefore, raised the dispute. The action of the respondent is said to be illegal and discriminatory with a view to defeat his right of regularization on time. On these averments, the petitioner has prayed for condonation of the fictional breaks. According to him, the period *w.e.f.* 2002 to 2011 be counted towards his seniority and continuity in service and his regularization be ordered as per the policy of the State Government from the date when his juniors were regularized. He has also prayed for arrears and compensation etc.

3. The respondent has resisted and contested the claim. It is submitted that the petitioner used to report to the work at his sweet will and no fictional breaks were ever given to him. It is submitted that in the year 2001 he has worked for 236½ days and not for 240 days as claimed in the petition. Services of Shri Angat and others were regularized for the reason that they were regular in their working and had fulfilled the criteria in advance, whereas, the petitioner remained absent and could not be fulfill the requisite criteria. Denying other allegations as incorrect, the respondent has prayed for dismissal of the claim.

4. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those made in the reply.

5. On the pleadings of the parties and language of the reference received by this court, following issues were framed for determination on 2nd August 2018:—

1. Whether time to time termination of service of the petitioner by the respondent during the year, 2002 to year 2011 is/was legal and justified as alleged? . . . *OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.

Relief.

6. I have heard learned Counsel for the petitioner as well as learned Dy. District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Relief : Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 3 :

8. All these issues are interlinked and interconnected and taken up together for the sake of evidence and to avoid repetition of evidence.

9. The parties led evidence in support of their claim. Petitioner appeared as PW1 in the witness box. He has tendered his affidavit Ext. PW1/A, the mandays chart Mark-A and copy of seniority list Mark-B. The petitioner has replicated the averments of the claim in his proof affidavit Ext. PW1/A. The respondent, on the other hand, has examined Shri S.C. Prashar, DPF Suket Forest Division Sunder Nagar as RW1 and he has tendered his affidavit Ext. RW1/A. He has also tendered on record mandays chart of the petitioner Ext. RW1/B, copy of letters Ext. RW1/C and Ext. RW1/D and copy of another mandays chart Ext. RW1/E. He has further deposed that the services of the petitioner have been regularized vide letter dated 22.6.2019 (Ext. RW1/F).

10. The crux of the controversy, therefore, is to the effect that the petitioner has worked for less than 240 days in the year 1999 to 2011 and thereafter he has worked for more than 240 days and as of now his services have been regularized as per regularization policy. In this background, the case of the petitioner is to the effect that he wanted to work throughout but he was given fictional breaks in between 1999 to 2011 by the respondent department so that his right of consideration under the regularization policies does not accrue to him. The respondent, on the other hand, as aforesaid has claimed that petitioner was in the habit of absenting himself and since he did not work for minimum 240 days in between 1999 to 2011 therefore, this period could not be considered for his regularization from the back date. It is clear from the mandays chart Ext. RW1/B that petitioner has worked for 54 days in 1999 and 255 days in the year 2000. He has worked for

236½, 193, 165, 106, 119, 56, 52, 119, 179, 150 and 48 days in between 2001 to 2011. The petitioner has also not disputed this fact. He has termed it as fictional breaks. It is also admitted that Shri Angat was junior to the petitioner and he was regularized prior in time. The reason being that he has worked for minimum 240 days in each calendar year and his case fell in the zone of consideration earlier in time to the petitioner. The petitioner has claimed that as many as fifteen persons shown in para No.3 of his claim were juniors to him but their services were regularized prior in time and no fictional breaks were given to them. Even if, the case of the petitioner is accepted in its entirety even then it becomes clear that right from the year 2001 to the year 2011 he was well aware of the fact that fictional breaks were being given to him in order to defeat his rights available under labour laws and workmen junior to him were being given work for the entire year, and therefore, prejudice was being caused to him. The petitioner has not agitated the matter in between 2001 to 2011. There is not even a single document placed by him on the record which would suggest that he has either written an application to the authorities in the respondent department requesting to stop such a discriminatory treatment with him and give him work in parity to workmen junior to him. The petitioner has not placed on record any complaint ever moved by him either to Labour Inspector or to the other officers of the department who could have taken cognizance of the matter. The petitioner has not taken concrete steps in between 2001 to 2011 to get the wrong action of the respondent rectified. In case, the fictional breaks were given to the petitioner in such a manner he was free to raise the demand and get the matter settled through intervention of the court. The petitioner kept silent over his rights for as long as 15 years and he raised this issue in the year 2015 for the first time. When such is the conduct of the petitioner the inference the court can draw is that he was in the habit of absenting himself and kept on absenting himself till the year 2011, and thereafter, worked for the whole year and the demand was raised by him after fifteen years in order to get the benefit of his own absence. In a similar situated case before the Hon'ble High Court of Himachal Pradesh titled as **State of H.P. & Ors. Vs. Sanjv Vajir** decided on 22.5.2023 being **CWP No.1272 of 2021** was pleased to hold in paras Nos. 6 and 7 of the judgment that onus to prove the fact the fictional breaks was solely upon the respondent/workman and court could not draw inference in the absence of any positive evidence. The Hon'ble Court was further pleased to hold that there was nothing on the record to indicate that the respondent/workman had question the action of petitioner/employer on the ground that he was being given fictional breaks so as to deny his claim for regularization. In this case also, the workman has though worked from the year 1999 to 2007 but his days has fallen short of 240 days in each calendar year except the year 2000. The Hon'ble Court was pleased to hold that merely because some other workmen were offered muster roll for full months after the year 2007, it could not lead to the inference that discrimination has taken place with the respondent/workman so as to defeat his claim for regularization. Setting aside the award, the Hon'ble Court concluded that the court can not base its findings on hypothesis without there being any proof either in the pleadings or in the evidence so led. In the case in hand also, the petitioner has though alleged that he was given fictional breaks in between 2001 to 2011 yet he has not brought any material on the record to suggest that he has ever protested against such an inaction of the respondent. As aforesaid, no written document was ever moved by him to protest the discriminatory conduct of the respondent. No such document has been placed on the record. The petitioner remained in slumber for fifteen years and raised the demand at all. He woke up in the year 2015 and assumed that by raising the demand, he could also get the benefit of regularization, seniority, continuity and compensation etc. from the back date. No doubt Industrial Disputes Act is beneficial piece of legislation but undue sympathy toward the workman can not substitute the intentions of beneficial legislation. When petitioner has not produced even a single document ever addressed in so many years to the authorities in protest against such fictional breaks, he can not be permitted to contend that he was given fictional breaks with a view to deprive him to get his services regularized on time. In this situation, the plea of the respondent that the petitioner was in the habit of absenting himself from the work and he used to come for work for few days in a year can not be disbelieved. The petitioner has not been able to lead any evidence which could be treated as cogent and convincing to prove

that he was subjected to fictional breaks and discrimination by the respondent department and such discrimination led to the fact that workmen junior to him were regularized prior in time whereas, his services could be regularized only after he fell in the zone of consideration for regularization. Thus in view of this discussion and the law laid down by the Hon'ble High Court referred hereinabove, it is held that petitioner has failed to establish by leading cogent, convincing and positive evidence that he was given fictional breaks in between 2001 to 2011 as a measure of discrimination by the respondent and workmen junior to him were regularized. Rather, the plea of the respondent is more probable in the absence of the cogent evidence led by the petitioner and it is established that petitioner used to remained absent and thus he himself was responsible for the delay. Had the petitioner not absented himself from the work, he would not have keep quiet for fifteen years and tolerated the discrimination. Even if the workman is illiterate yet he can not be presumed to be ignorant to the such a level that workman junior to him were being regularized and given work for 240 days and he (petitioner) did not realize even once that he was being subjected to discrimination. Had he raised the demand at the earliest or had he moved some complaint/application in writing to the department, the onus would have shifted upon the respondent to explain as to what was the action taken to deal with those representation. Since nothing was done by the petitioner, he has thus failed to prove his case and it is not established that time to time termination of the petitioner took place in between 2001 to 2011 and purpose of such discrimination was to defeat his right of regularization on his turn. It is also not established that such breaks was given to the petitioner in order to promote the workmen juniors to him earlier in time. For the aforesaid reasons, the petitioner is held not entitled for any relief. Petition is held maintainable for the reason that it has been filed in support of the reference but it is entirely a different matter that the petitioner has failed to establish the claim, hence issues Nos. 1 and 2 are held in negative against the petitioner and issue No. 3 is held in favour of the petitioner.

Relief :

11. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

12. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 21st day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 18/2018
Date of Institution : 28-3-2018
Date of Decision : 21-07-2023

Smt. Guddi Devi w/o Shri Krishan Chand, r/o Village Putlipald, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri S.K. Sharma, Ld. Adv.

For the Respondent : Shri Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether termination of the services of Smt. Guddi Devi w/o Shri Krishan Chand, r/o Village Putlipald, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 01.06.2000 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority past service benefits and amount of compensation the above aggrieved worker is entitled to from the above employer?”

2. The case of the petitioner as made out from the claim is that she was engaged as daily rated beldar by the respondent *w.e.f.* 1st July 1998 in the Dharampur Division and she worked as such till 31.5.2000 when her services were terminated orally without following the procedure as provided under the Act. The respondent has not prepared the seniority list and workmen junior to petitioner were permitted to continue and fresh hands were also joined. The names of junior workmen have been mentioned in para No. 3 of the petition. Retrenchment of workmen took place on political basis in between 1999 to 2005 and hundreds of daily rated workers were terminated. The petitioner visited the respondent time and again with the prayer that she be reinstated, but she was put off on one or the other pretext on the ground that since similar issue of number of retrenched workmen was under consideration before Government of H.P, therefore, decision qua her case shall also be taken with those cases. Nothing was done later on, and the petitioner raised the demand in the year 2009 but her matter was not referred to the court on the ground of delay. She filed writ petition which was dismissed by Hon'ble High Court and thereafter she approached the Hon'ble Supreme Court and it was observed by the Hon'ble Court that the matter be referred for adjudication ignoring the objection of delay in the matter and in this manner the present reference was made to this court. The petitioner has thus prayed for her reinstatement with all the consequential benefits.

3. The respondent has resisted and contested claim and explained that the petitioner was engaged as daily rated beldar on muster roll basis *w.e.f.* January 1999 and she worked intermittently upto September 1999 and thereafter left the services at her sweet will. It is alleged that she has not completed 240 working days in the preceding 12 calendar months, and therefore, there was no violation of Section 25-F of the Act. The respondent has denied that any workmen junior to the petitioner was retained and her services were terminated. The respondent has denied that the

petitioner was assured any point of time to be reinstated with other terminated workmen. It is further contended that the petitioner has approached the court with considerable delay and now she was not entitled for any relief.

4. The petitioner filed rejoinder in this case and reaffirmed the averments made in the claim and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 09.4.2019:—

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 01-06-2000 is/was illegal and unjustified as alleged? . . . *OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits, the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable in the present form, as alleged? . . . *OPR.*
4. Whether the claim petition suffers from the vice of delay and latches as alleged? . . . *OPR.*

Relief.

6. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:—

| | |
|-------------|---|
| Issue No. 1 | : Affirmative |
| Issue No. 2 | : Affirmative |
| Issue No. 3 | : Negative |
| Issue No. 4 | : Decided accordingly |
| Relief | : Petition is partly allowed awarding lump sum compensation of Rs.1,00,000/- per operative portion of the Award. |

REASONS FOR FINDINGS

ISSUES No.1 to 4 :

8. All these issues are interlinked and interconnected and taken up together for the sake of evidence and avoid repetition of evidence.

9. There is dispute of fact with regard to the period to which the petitioner worked as daily wage beldar with the respondent. The petitioner alleges that she was engaged on 1.7.1998, whereas, the respondent has pleaded that petitioner was engaged in January 1999. Since the

petitioner has raised the plea that she was engaged in July 1998 therefore, onus is upon her to establish the same by leading at least some evidence to prove this plea. The petitioner has sworn her affidavit Ext. PW1/A which is verbatim of the claim petition. Even the case law has been referred to by the petitioner in this affidavit despite of the fact that she is an illiterate woman and puts her thumb impression on her affidavit. Except this affidavit, no other evidence has been led by her on the record to prove that she was engaged on 1.7.1998. She has tendered on record demand notice Ext. PW1/B and copy of order of Hon'ble High Court Ext. PW1/C and judgment of Hon'ble Supreme Court Ext. PW1/D. In the demand notice she has referred to the date of her engagement as 1.7.1998 but the mandays chart produced by the respondent shows that date of her engagement is 1/1999 and she has worked for 29 days on muster roll No. 96 during this month. The mandays chart finds mention of the number of muster rolls issued in her favour, and it is therefore, clear that it has been prepared from the records available in the office of the respondent. In case the petitioner has worked *w.e.f.* 1.7.1998, the muster roll pertaining to this period should have been available with the department and there was no reason to conceal the same. The petitioner has not examined any other co-workers, her neighbours or family members to state about the fact that they had seen the petitioner working with the respondent *w.e.f.* July 1998. When such is the position, the self serving statement of the petitioner that she was engaged on 1.7.1998 is not sufficient to prove this fact. Rather, the mandays chart Ext. RW1/B which has been prepared from the records available in the office of the respondent has to be relied upon, whereby she is shown to have joined the work on 1/1999 vide muster roll No. 96 and she has worked for 29 days during this month. Thereafter she has been shown to have worked in continuity till September 1999. When total number of working days are counted, the same comes to 237 days and thus the number of days are short to 240 days and therefore, compliance of Section 25-F of the Act was not required in this case.

10. The respondent has taken up the plea that petitioner has left the work at her own and her services were never terminated. The respondent has thus taken the plea of abandonment. It is settled law that whenever the employer takes the plea of abandonment of the work by workman it is for the employer to prove that the employer had taken all the steps required before coming to the conclusion that there was abandonment of the work by the workman. Absence from duty is a serious misconduct and, in case, any worker absents himself/herself for days together it is the duty of employer to take action against him by conducting a domestic inquiry into the reasons of absence after giving the workman an opportunity of being heard. In case, it is proved during the inquiry that the abandonment was voluntary act of the worker, only then the plea of abandonment can be sustained. In case, steps are not taken by the employer to call back the workman and such a workman is not apprised of his valuable rights available under the law, the plea of abandonment does not sustain. After the inquiry aforesaid, it is the duty of the employer to record the finding of misconduct on account of absence. Once the employer takes all these steps only then the employer can take the plea of abandonment of work by the workman and only then the court can accept such a plea. In the case in hand, neither any notice was served upon the petitioner for her absence nor any inquiry was initiated into the reason of her absence and nor any findings of misconduct were recorded by the department in its record before taking the plea of abandonment of job by the petitioner. All these facts are clear from the cross-examination conducted upon Shri Vivek Sharma, Executive Engineer (RW1). When such is the position, the plea of abandonment of work is not established. Law to this effect has been laid down and followed consistently till date. Reference at this stage may be made of the judgment of Hon'ble High Court of Himachal Pradesh in **CWP No.1747 of 2016 decided on 24.10.2019 titled Himachal Pradesh State Electricity Board Ltd. & Anr. Petitioners Versus Sanjay Kumar**. In the case in hand also since nothing was done by the respondent to call the petitioner back, therefore, the only inference that can be drawn is that her services were illegally terminated by the respondent *w.e.f.* September 1999.

11. The petitioner has specifically alleged that violation of Section 25-G has also taken place in this case as workmen junior to her were retained and her services were terminated by the

respondent. As has already been held hereinabove that it was the duty of the respondent to have called the petitioner back to work in case she was absenting herself and since the plea of abandonment has not been established therefore the plea of termination of the services of the petitioner has been established. In case the services of the petitioner were terminated and juniors were retained therefore violation of Section 25-G has taken place in this case. When the statement of the petitioner recorded in the shape of affidavit Ext.PW1/A is examined it is clear from para No. 3 that so many workmen were junior to her were retained whereas, the services of the petitioner were terminated. This fact has not been seriously assailed during cross-examination. The plea taken by the petitioner has been strengthened by Er. Vivek Sharma of his turn. Er. Vivek Sharma appeared as RW1 in the witness box and his affidavit Ext. RW1/A. He was subjected to cross-examination wherein he pleaded his ignorance regarding question as to when workmen shown in para No. 3 of her affidavit were engaged. He further stated that he has not produced the records pertaining to workmen mentioned in para No. 3 of the petition. The respondent has although denied the fact that workmen shown in para No. 3 of the claim were junior to the petitioner yet no evidence has been led to establish the same. The respondent was in possession of plenty of evidence to prove this plea. Seniority list could have been produced on the record showing the date of engagement of those workmen so that this court could compare the date of joining of the petitioner with those workmen. The respondent could have produced the records of those workmen shown in para No. 3 before the court and prove that they were senior to the petitioner. Shri Vivek Sharma (RW1) who was supposed to meet the case of the petitioner fully has pleaded his ignorance regarding the fact as to when the workmen shown in para No. 3 were engaged. His plea of ignorance has weakened the case of the respondent and strengthened the case of the petitioner. Since the petitioner has spoken on oath that the workmen shown by her in para No. 3 are junior to her and they have been retained, therefore, nothing else was required to be proved by her as she was not the custodian of the records. It was ultimately for the respondent to lead evidence to prove as to when those workmen were engaged. Had any such record been produced by the respondent showing that those workmen were engaged prior to the petitioner, the plea of the petitioner would have rebutted. Since no such evidence has been led on the record therefore, the plea of petitioner is proved and plea of respondent is not established. It is proved that the workmen junior to the petitioner were retained and services of the petitioner were disengaged by the respondent. Er. Vivek Sharma has admitted in his cross-examination that those workmen shown in para No.3 of the affidavit have been regularized in the year 2008. Thus it is also proved that those workmen were not only retained but they have been regularized and the services of the petitioner were terminated. This evidence proves the violation of Section 25-G of the Act in this case.

12. The petitioner has though stated that fresh hands were also engaged but no such evidence has been led by the petitioner to this fact therefore Section 25-H of the Act is not established in this case.

13. The case of the petitioner is to the effect that she was put off one of other pretext till the year 2000 only then she raised the demand and delay was therefore bonafide on her part. The respondent on the other hand has pleaded that there is delay around ten years in raising the dispute and therefore, petitioner is not entitled for any relief. Learned counsel for the petitioner has cited judgment of Hon'ble High Court titled as **State of H.P & Anr. Vs. Mahinder Singh reported in 2017 LLR 1256**. The State Government of H.P had assailed the Award of the Labour court by way of writ petition on the plea that the Labour Court should have dismissed the claim petition on the ground of delay and laches as the workman had raised the dispute after a considerable time. Relying upon **Mukand Ltd. v. Mukand Staff & Officers association reported in 2004(101) FLR 219 (SC)**, it was held that the Tribunal being the creature of the Reference, can not adjudicate the matters not within the purview of the dispute actually referred to it by the order of Reference. It was further held that since the question of delay and laches was not referred to the Tribunal, therefore, the Tribunal could not have answered the Reference against the workman on the ground of delay and laches, and has thus rightly granted the relief.

14. Learned Dy. D.A. for the respondent has argued that this judgment is not exactly on the point that the person who comes to the court after considerable delay is entitled for reinstatement if the question of delay has not been raised in the reference. He has argued that this judgment is actually on the point as to whether the claim petition was liable to be dismissed on the ground of delay when the objection of delay was not taken. The learned Dy. D.A. for the respondent has cited judgments of Hon'ble High Court of H.P. **2019 LawSuit(HP) 185** titled as **Parkash Chand vs. Executive Engineer, HPPWD & Roop vs. Executive Engineer, HPPWD** reported in **2019 LawSuit (HP) 253** and submitted that when there is inordinate delay in approaching the court the relief of reinstatement is not the rule but in such cases the appropriate remedy is grant of compensation.

15. In the case in hand, the petitioner has although come up with the plea that since several other workmen were retrenched during the aforesaid period and she was put off one or other pretext but this reason is not sufficient as the petitioner has raised the issue after 10 years after her termination. The period of 10 years is a long period and the petitioner cannot be permitted to take the benefit of this delay on the ground that she used to visit the officers of the department with the request that her services be reinstated but she was put off one or other pretext. The petitioner was conscious of her rights from the day of her termination as the workmen junior to her were still working. She should have raised the matter at earliest. The petitioner slept over her right for long ten years, and therefore, she can not take advantage of her own conduct. So far as the judgment cited by learned counsel for the petitioner titled as **State of H.P. & Anr. Vs. Mahinder Singh** is concerned, the argument raised before the Hon'ble High Court was that claim petition should have been dismissed for the reason that there was delay in approaching the court. It is in this context that the Hon'ble Court was pleased to hold that since the issue of delay and laches was not raised in the reference, therefore, question of dismissal of the claim did not arise. In the case in hand, the question is whether the petitioner is entitled for reinstatement or compensation. It is settled law of Hon'ble Supreme Court in **Deputy Executive Engineer vs. Kuberbhai Kanjibhai, 2019 FLR 651, Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177, District Development Officer & another vs. Satish Kantilal Amerelia, 2018 (156) FLR 266 (SC) and State of Uttarakhand vs. Raj Kumar, 2019 (160) FLR 791** that when there is delay in approaching the court the reinstatement is not the rule and the court can consider the case for grant of compensation. In the case in hand, since there is inordinate delay in approaching the court, therefore, violation of Section 25-G of the Act *ipso facto* can not be taken to reinstate the services of the petitioner. Rather the petitioner has slept over her rights for considerable period and much water has flown under the bridge. In these facts and circumstances of the case the petitioner is held entitled for compensation of Rs.1,00,000/- in lieu of reinstatement and other benefits. Petition is maintainable as it was filed in support of the reference. Hence all these issues are decided accordingly.

Relief :

16. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-G of the Act but the petitioner had raised demand after a gap of more than 10 years and her claim for reinstatement has been thus vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in her favour but she is held entitled for compensation to the tune of ₹1,00,000/- (Rupees one lakh only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 21st day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 52/2022
Date of Institution : 10-5-2022
Date of Decision : 21-07-2023

Shri Ram Dev s/o Shri Bratu Ram, r/o Village Graman, P.O. Thaltu Khot, Sub Tehsil Tikkan, Tehsil Padhar, District Mandi, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Rajat Chaudhary, Ld. Adv.

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the demand raised by Shri Ram Dev s/o Shri Bratu Ram, r/o Village Graman, P.O. Thaltu Khod, Sub Tehsil Tikkan, Tehsil Padhar, District Mandi, H.P. who has worked on bill basis, before the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. vide demand notice dated 12-07-2021 (copy enclosed) regarding condonation of break period of services in continuous service w.e.f. March, 2015 to June, 2020 and thereafter regularization of services after completion of 5 years services as per the policy framed by the Government of Himachal Pradesh regarding regularization, as alleged by the workman, is maintainable, legal and justified? If yes, what amount of back wages, past service benefits, regularization and compensation the above workman is entitled as per demand notice from the above employer?”

2. The case of the petitioner as made out from the claim is that he was engaged on daily wage basis in March 2015 and no appointment letter was issued to him. He was made to work in forest range Tikkan, Urla and fictional breaks were given to him so that he could not complete 240 days work in particular each year. He worked till June 2020 with fictional breaks and therefore, he was deprived of all the benefits available under the law. The further case of the petitioner is to the effect that he was entitled for regularization after having completed five years of service as per regularization policy but fictional breaks had broken his service tenure and therefore, these fictional breaks are liable to be condoned and thereafter his case be considered for regularization as per policy of the State Government. The respondent during his work was paid on daily wage basis and he had never agreed to work on bill basis and his presence was also marked everyday in the copies. He was not given wage slips, casual card, attendance card or identity cards by the department intentionally to deprive him of all the benefits available under the law. Other workmen are also working with the respondent and their seniority lists are maintained and juniors are being retained at his costs. Fresh hands have also been engaged and violation of Sections 25-G and 25-H of the Act has also taken place. On these averments, the petitioner has prayed for condonation of his break period and regularization of his services after completion of five years in June 2020 in accordance with the policy framed by Government of Himachal Pradesh.

3. The respondent has resisted and contested the claim on the plea of maintainability and the locus standi of the petitioner. On merits, it is explained that the petitioner was engaged in March 2015 by Divisional Forest Officer Joginder Nagar on bill basis and he had worked on bill basis throughout hence, he had no right to be regularized as he was not the employee of the department at all. The petitioner has worked till March, 2021 as per his sweet will and availability of work and funds, and no fictional breaks were given to him nor such breaks could be given to him as he was not the employee of the department. The respondent has made reference of the notification dated 9.11.2009 by the State Government whereby all the departments were directed to shift to tender system and get the work done on tenders, quotations and scheduled rates as per classification and it is submitted that the petitioner has leveled false allegations and he was not entitled for any relief. Allegations regarding retention of juniors and engagement of fresh hands are also denied as incorrect. It is submitted that petitioner has no case on merits, and reference be decided against him.

4. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those made in the reply. He has reiterated that he has worked on daily wage basis and not on bill basis. It is further explained that neither any quotations were taken from by him nor there was any reason for him to work on bill basis.

5. On the pleadings of the parties and language of the reference received by this court, following issues were framed for determination on 3rd January 2023:—

1. Whether the petitioner was subjected to fictional breaks by the respondent in between March, 2015 to June, 2020 as a result of unfair labour practice, as alleged? . . . *OPP*.
2. Whether the petitioner is entitled for the relief of condonation of fictional breaks, as claimed? . . . *OPP*.
3. Whether the petitioner is entitled for relief of consideration of his case for regularization by the respondent? . . . *OPP*.
4. Whether the petitioner is entitled for other consequential relief, as alleged? . . . *OPP*.
5. Whether the claim petition is not maintainable, as alleged? . . . *OPR*.

6. Whether the petitioner has worked on bill basis, as alleged. If so, its effect? . . . *OPR*.

Relief.

6. I have heard learned Counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : Yes

Relief : Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No .6 :

8. This issue is material for the purpose of this case and requires to be decided first as the question of fictional breaks would arise only after the court comes to the conclusion that petitioner was a daily wager worker of the respondent and he has never worked on bill basis.

9. When the reference received by this court is carefully examined, it is clear that the reference in itself is regarding the bill basis work done by the petitioner. When this reference is examined in the light of the demand notice upon which reference has been made, it is clear that the petitioner has alleged that he had worked as daily wage and not on bill basis. This demand notice has though not been exhibited on the record yet there is no serious dispute regarding the same hence it is read for the convenience. The petitioner has claimed in the demand notice that he has worked as a daily wager but the reference has been received to the effect that the petitioner has worked on bill basis. The petitioner has not assailed this reference so that it could be corrected in accordance with the demand notice. The reference has become final. Still in order to completely adjudicate the lis, the court prefers to enter into the merits of this plea as well. Thus firstly it is examined whether the petitioner is proved to have worked on daily wage basis or on bill basis. Since the petitioner has taken the plea that he has worked on daily wage basis, therefore, the onus upon him to establish this plea. He was supposed to lead evidence on this fact. The petitioner has not placed on record any document which could show that he was working with the respondent on muster roll and was a daily wager. No muster roll has been placed on the record. The petitioner has not got any record of the respondent summoned for the inspection by this court. The petitioner has not examined his co-workers in the witness box to depose about the fact that petitioner was working on muster roll and he used to sign the muster roll. No such muster roll has been seen in the light of the day. Even the family members of the petitioner have not come forward to speak that petitioner was working as daily wage beldar and not on bill basis. The petitioner in his cross-

examination has admitted the very first suggestion as correct to the effect that he has put forth his case before Labour Officer to the effect that he has worked on bill basis since March 2015. This admission is also important and since it goes against the interest of the petitioner therefore, it can be used against him as he himself admits the suggestion as correct. The petitioner has thus led no independent evidence on the record to prove that he has worked as a daily wage beldar. When petitioner has failed to establish the plea taken by him, therefore, it can not be said that he was working as daily wage beldar. On the other hand, the respondent has taken up the plea that petitioner had not worked on daily wage basis. The respondent has made reference of the letter by Government of Himachal Pradesh dated 28.4.2009 tendered as Ext. RW1/D. When this letter is carefully gone through it is very much clear from the same that all works of the departments shall be got done on bill, quotations or tender basis and muster roll could be issued to those workmen only who were working as daily wagers for last many years and it was not possible to remove them as their services were protected by labour laws. This letter pertains to the year 2009. The petitioner was engaged in the year 2015. When there are clear cut directions of the Government of Himachal Pradesh that no fresh daily wagger shall be engaged, there was no reason for the respondent department to have engaged the petitioner as daily wage beldar in the year 2015. The respondent department has specifically taken the plea that no such engagement has taken place. The respondent department has placed on record several copies of bills as Ext. RW1/B1 to Ext. RW1/B33 pertaining to the petitioner and when these bills are carefully examined it is clear from their perusal that the petitioner has worked on bill basis on the scheduled rates and his days were not counted. He has performed the work either filling of poly bags or watering a particular number of plants and for 10 days every month and so on. He has not done any work on daily wage basis. His work was rather assessed as per prevalent scheduled rates and he was paid accordingly. None of the bills referred above show that the petitioner was paid on daily wage basis. His bills were prepared and consolidated amount was paid to him which used to vary from month to month as some of the months he has earned more amount and in other months he has earned less amount in accordance with work done by him. Had he been working as daily wage beldar he was to receive wages every month and there is no difference of daily wages month on uniform rates. These bills show that petitioner has done a particular work with the department and work was assessed as per scheduled rates and after completion of the work, payments were made to the petitioner and the petitioner has signed every bill in lieu of the payment received by him. Had the petitioner worked on muster roll, the department would have placed on record those muster rolls and showed the number of working days the petitioner has actually worked. Since no such document has been placed on record, it can not be said that petitioner has worked on daily wage basis. Rather, it is proved from the bills that the petitioner has worked on bill basis and he was paid as per scheduled rates. When these bills are carefully gone through it is clear that number of poly bags have been mentioned in the same and scheduled rates were fixed for particular bag and then that rate was multiplied with number of bag and payment was accordingly made. It is not mentioned in these bills that the specific wage was paid to the petitioner. Thus the work of bill basis is entirely different type of work and person who works on bill basis can not be equated with the worker who works on muster rolls. The work done on muster rolls and the work done on bill basis are two different forms of work. On bill basis, the work is done by any workman after he is apprised of the scheduled rates for doing a particular work. For example, in case, the rate for filling soil in a poly bag has been fixed as three rupees per bag, then it depends upon the efficiency of the worker as to how many bags he is able to fill. Suppose he fills 300 bags then he earns a sum of Rs. 900/-. It is immaterial whether he has worked during the night or during the day or he has taken the help of his family members. This bill basis system is entirely different system. It is like a petty contractor-ship where the labourer becomes a petty contractor, get the specified work and is paid on specified rates disclosed to him. The workers either completes the work within a day or within few days as per his own choice but he is to get the fixed amount irrespective of the number of days he has worked. The respondent has not disputed these bills. It is not his case that these documents are false documents. Otherwise also government department shall not forge so many documents in the case of only one worker and

there is nothing on the record to show that petitioner was being subjected to unfair labour practices and the officers of the department had any ill-will or grudge towards the petitioner. The petitioner has himself failed to establish that he was working as a daily wage beldar and he has worked for particular days. The petitioner has not pleaded anywhere that he has worked for particular number of days every year.

10. The petitioner has tried to make out a case that some other workers were working on daily wage basis with the department. The seniority list as it stood on 30.11.2016 was put to the witness Shri Rakesh Katoch and he has admitted that it pertains to his department. When this list is seen it shows that there were daily wagers with the department right from the year 1987 upto the year 2015. One Kashmir Singh is shown to have been engaged on 1.2.2015. This document does not help the petitioner in any manner unless he is able to put specific question to this witness regarding particular worker. The list does not prove that petitioner was a daily wager as the name of the petitioner has not been mentioned at any place in this seniority list. This list therefore, fails to help the petitioner in any manner. Shri Rakesh Katoch, DFO has appeared as RW1 and he has sworn his affidavit Ext. RW1/A. He has stated consistently that the petitioner has worked on bill basis and he has not worked as a daily wage beldar with the department. He has specifically stated that the services of the petitioner were never taken as daily wager and he has rather worked on bill basis. The statement of the petitioner does not help him in any manner as he has not been able to prove that he was engaged as daily wage beldar for five years. He himself has admitted that he was working on bill basis. Thus for all these reasons, it is held that petitioner has worked on bill basis and he has not worked on daily wage basis as claimed by him. Issue No.6 is held in favour of the respondent.

ISSUES No. 1 to 5 :

11. Since the petitioner has not proved to have worked on daily wage basis with the department and since he has failed to show number of days he has worked therefore, it is held that he was not subjected to unfair labour practices by giving him fictional breaks by the respondent department and he is also not entitled for regularization after condonation of the breaks. He is not entitled for any consequential benefits. Petition is maintainable for the reason that it has been filed in support of the reference but it is different matter that the petitioner has failed to establish the claim, hence, issues Nos. 1 to 4 are held in negative against the petitioner and issue No. 5 is held in favour of the petitioner.

Relief :

12. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

13. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 21st day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 376/2015

Date of Institution : 18-8-2015

Date of Decision : 31-07-2023

Shri Kuldeep alias Debi Ram s/o Shri Nokhu Ram, r/o Village Seri, P.O. Chunahan, Tehsil Sadar, District Mandi, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.K. Sharma, Ld. Adv.

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether time to time termination of the services of Shri Kuldeep alias Debi Ram s/o Shri Nokhu Ram, r/o Village Seri, P.O. Chunahan, Tehsil Sadar, District Mandi, H.P. during July, 2001 to July, 2012 and finally during August, 2012 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After receipt of aforementioned reference, a corrigendum reference dated 21 May 2018 has been received from the appropriate Government which reads as under:—

“Whereas a reference has been made to the Ld. Labor Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. vide notification of even No. dated 10-08-2015 for its legal adjudication. However, inadvertently the correct facts could not be mentioned about the date of time to time termination in the said notification. Therefore, the same may be read as “July, 2001 to July, 2012” instead of “July 2001 to July, 2012 and finally during August, 2012”.

3. It may be stated at the very beginning that the original reference and corrigendum thereto are same and no alteration in the original reference has been made by way of corrigendum. When the claim petition as well as letter moved for corrigendum are examined, it becomes clear that the petitioner intended to introduce by way of corrigendum the fact that his final termination has not taken place and he was still working with the respondent and was subjected to fictional/time

to time termination, and therefore, those breaks be condoned and counted towards his seniority. Therefore, this court proceeds on the assumption that the petitioner is still in services and he is claiming condonation of time to time breaks by way of this claim and the reference is also for the same purpose as it appears that the corrigendum has inadvertently been sent on the same terms instead of incorporating the actual prayer of the petitioner made in the application for corrigendum. Since the appropriate Government has accepted the application for making the corrigendum, therefore, it is presumed that appropriate Government intended to introduce the facts regarding time to time termination by way of corrigendum but due to typographical/computer mistakes the same corrigendum was made which already existed in the original reference.

4. The case of the petitioner as made out from the claim petition is to the effect that he was engaged as daily rated beldar in forest department (Suket Division) *w.e.f.* 1.1.1999 and he is working till date but with fictional breaks. According to him, these fictional breaks are given to him with a view to deprive him of his valuable rights and workmen juniors to him are permitted to complete 240 days in each calendar year. The petitioner has named as many as fifteen workmen in para No. 3 of the claim, who according to him, were given work for minimum period of 240 days by the respondent and they all were regularized with the passage of time. The petitioner filed a writ petition before the Hon'ble High Court of Himachal Pradesh in the year 2009 and the Hon'ble Court directed the petitioner and other co-workmen to approach the appropriate forum for redressal of their grievances hence he (petitioner) raised the demand in the year 2013 vide demand notice dated 25.2.2013. He moved another amended demand notice dated 13.5.2013. The reference was made by the appropriate Government regarding final termination of the petitioner *w.e.f.* August, 2012 as the amended demand notice was not taken into consideration. The petitioner, therefore, moved an application for corrigendum and now the corrigendum dated 21.5.2018 was received. The case of the petitioner is to the effect that he has not worked anywhere during the period of breaks and remained unemployed and he was subjected to discrimination by not giving him work for minimum 240 days like the workmen junior to him as services of those workmen were regularized much prior and he (petitioner) was deprived of those benefits. On these averments, the petitioner has submitted that the fictional breaks given to him be condoned right from his initial engagement and till date and the breaks be counted towards his seniority and continuity in service. It is further submitted that department be directed to regularize his services in the same manner as his juniors were regularized and all consequential benefits be also awarded to him.

5. The respondent has resisted and contested the petition on the plea that petitioner was engaged in July 2001 and he worked intermittently upto 2012. Thereafter he worked on bill basis after April, 2013 to June 2018. He was in the habit of absenting himself at his sweet will and in this manner he never completed 240 days in any calendar year and no artificial breaks were given to him as alleged by him. The petitioner is said to be an agriculturist who used to work for gains in his fields. It is submitted that claim petition be dismissed.

6. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those made in the reply.

7. On the pleadings of the parties and language of the reference received by this court, following issues were framed for determination on 24th October 2019:—

1. Whether time to time termination of the services of the petitioner by the respondent during July, 2001 to July, 2012 is/was illegal and unjustified, as alleged? . . . *OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP.*

3. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*

Relief.

8. After receipt of corrigendum dated 21.5.2018, the issues were recasted/ reframed which are as under:—

1. Whether time to time termination of the services of the petitioner by the respondent during July, 2001 till date is/was illegal and unjustified, as alleged? . . . *OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP.*

3. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*

Relief

9. I have heard learned Counsel for the petitioner as well as learned Dy. District Attorney for the respondent at length and considered the material on record.

10. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Relief : Petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 3 :

11. All these issues are interlinked and interconnected and taken up together for the sake of evidence and avoid repetition of evidence.

12. When the entire material placed on the record is examined it becomes clear that petitioner has alleged that he was given fictional breaks right from the year 1999 till date by the respondent and those breaks were given with a view to frustrate the rights he was supposed to acquire under the Industrial Disputes Act with the passage of time especially, the right of regularization as per the policies of the HP State Government. The case of the respondent, on the other hand, is otherwise and to the effect that petitioner was himself irregular in his work and he was in the habit of remaining absent for days during the calendar year, hence he was himself responsible for the situation. The further case of the respondent is to the effect that after the year 2012 he has worked on bill basis and therefore, there was no question of his working on daily wage basis as claimed by him.

13. The respondent has placed on record the mandays chart of the petitioner as Ext. RW1/B, and a careful perusal of the same goes to show that petitioner has worked with the department from the year 2001 and not from the year 1999 as claimed by him. The demand notice

and amended demand notices Ext. PW1/C and Ext/PW1/D placed on the record by the petitioner show that petitioner has worked for minimum 240 days in the years 2004, 2005, 2008 and 2009 and for rest of the years he has worked for less than 240 days. In the year 2001 he has worked for least 19 days. In the year 2003 he has worked for 29 days and in 2002, he worked for 91 days. He has mentioned as many as 15 persons in the demand notice as well as the claim and averred that all of them were juniors to him but they were given work for the whole year by the respondent and were regularized with the passage of time. He has also pleaded that in the year 2009 he for the first time raised this issue by way of Writ Petition before Hon'ble High Court but he was directed to approach the appropriate forum and in the year 2013 he raised demand for the first time. When the evidence led by the parties is examined it is clear from the statement of Shri S.C. Prashar that one Leela Dhar was engaged in the year 2004 and regularized in the year 2017, Shri Jai Ram was engaged in the year 2005 and regularized in the year 2012. Leela Dhar has been shown to have worked from the year 2004 to 2011. Names of some other workmen who were engaged in the year 2000 regularized with the passage of time have also been given. This witness has tried to make out a case that most of the workmen were regularized by the orders of the court. He has also admitted that juniors have worked continuously.

14. In the aforesaid background, the first and foremost factor that emerges is that petitioner though was engaged in the year 2001, yet he did not raise any protest regarding the fictional breaks till the year 2009 when he allegedly filed the writ petition. Since the copies of writ petition and orders of Hon'ble Court have not been placed on the record, it can not be said exactly as to what were the issue raised before Hon'ble High Court. The demand notice was issued by the petitioner for the first time in the year 2013. Thus petitioner remained silent for as long as many as 12 years. The petitioner has himself named several workmen who were given work throughout the year and regularized with the passage of time. Such facts are clear from the pleadings made by him in the claim as well as the evidence led by him. Such questions have also been put to Shri S.C. Prashar in his cross-examination. Even if it presumed for a while that the petitioner was fully illiterate workman yet he can be presumed to be possessing so much prudence that he could realize that workmen junior to him were given work for whole of the year right from 2001 whereas, he was deprived of the same. The petitioner had been witnessing from the very beginning that workmen junior to him were being regularized whereas, his case could not be regularized for the alleged fictional breaks. When the petitioner was working with the respondent and he knew well that he was being subjected to unfair labour practice merely to defeat his valuable rights, why he did not raise the protest for more than eight years? There is no answer to this question either in the claim or in the evidence. The respondent, on the other hand, has explained that the petitioner was in the habit of remaining absent and he was given the work for the days he use to report for work. The further case of the respondent is to the effect that for all these reason the services of the petitioner could not be regularized and after the year 2012 he is said to have worked on bill basis as there was a policy of the State Government to not to give work on daily wage basis. The mandays chart on the record also shows that after the year 2015 the petitioner has worked on bill basis with the respondent. In case, the petitioner was regular in his work and was forced by the department to go on intermittent breaks, he would have not remained silent for many years. Even a child understands when a visible discrimination takes place with him. The petitioner was a grown up mind and he knew fully as who were his seniors and who were his juniors. The petitioner also knew fully as to who were being retained and whose services were being terminated. Despite of all this, he kept quite for more than eight years and raised the issue at the very late stage. This plea of the petitioner fails to withstand the scrutiny for the reasons that there is no explanation on the record to prove the fact as to why the protest was not raised at earliest or within reasonable time. Had the petitioner moved even an application on plain paper to his department claiming therein the work for the whole year in parity with other workmen who were junior to him, such application would have proved the fact that petitioner was willing to work and he had even protest against discriminate treatment by the department. The petitioner could have raised demand at earliest and there was no

reason for him to wait for more than eight years. When nothing concrete was done by the petitioner for so many years the only inference the court can legitimately draw is that he was in the habit of remaining absent and he used to work for few days only in the year. It further can be inferred from the conduct of the petitioner that after the year 2009 he was guided by some one to the effect that he could take the advantage of his wrong and get the fictional breaks condoned and claim the seniority and others benefits from the back date by raising the demand. It appears that for all these reasons petitioner for the first time for more than 8 years raised demand and alleged that he was given fictional breaks. Had this been not the reason, the petitioner would have raised demand at earliest and brought this fact to the notice of the superiors in the department. He could have made a complaint to the Labour Inspector or labour department regarding the fictional breaks being given to him time and again.

15. The petitioner has not even chosen to examine any other workman before this court who could depose that the petitioner was always willing to work but he was given fictional breaks intentionally by the department. The petitioner has not been able to bring any material on the record to point out as to why the department chose him alone for the fictional breaks. The petitioner has not alleged any ill-will, grudge or bias against the department or its officers for targeting him alone. He has not placed on record any Award passed by the court with respect to any other workman, who was also given the same treatment by the department during the same tenure. The Hon'ble High Court of H.P. in recent judgment titled as **State of H.P. & Ors. Vs. Sanjv Vajir** decided on 22.5.2023 being **CWP No.1272 of 2021** was pleased to deal with a similar situation where the petitioner has raised the demand after many years for condonation of the fictional breaks. The Hon'ble Court while examining the matter from all angles was pleased to hold that petitioner has failed to lead positive evidence as to why he was chosen for being discriminated by the department. The raising of the demand after so many years was taken as suspicious circumstance to hold that the petitioner was absenting himself from the work. It was observed in paras No. 6 and 7 of the judgment:

“.....6. It would be noticed that right from the years 1999 to 2007, the respondent did work but that was only intermittent and it was after the year 2008 upto 2010 that the respondent worked for more than 240 days but abruptly in the year, 2011, the respondent only put in 156 ½ days in service. There is nothing on record to indicate that the respondent during the relevant time had questioned the action of the petitioners on the ground that he was being given fictional/artificial breaks so as to deny the claim of the respondent for regularization, yet, the Presiding Officer has concluded that the respondent had deliberately been granted fictional/artificial breaks and the only reason for arriving at such conclusion is contained in para-26 of the award, which reads thus:—

"26. The seniority list, copy of which has been exhibited and proved on record by the petitioner as Ex. PW2/A through the statement of PW2 Shri Mukesh Kumar posted as Junior Engineer in HPPWD Division Baijnath, reveals that workmen Shri Ghanshyam and Shri Narayan Dass both were engaged in the year 2001 and since then they were being offered muster rolls for a full month upto the year 2007. Indisputably, both the above named workmen are shown to be employed in HPPWD Division Baijnath. There is no explanation on the part of the respondent as to why the petitioner, who admittedly was senior to the aforementioned workmen, was not granted the muster rolls for the entire month. Be it recorded at the risk of repetition that a plea was taken by the respondent that the petitioner was being engaged as per the availability of work and funds. If that be so, then why the respondent had been providing work for the entire month upto the year 2007 to the aforesaid workmen, who both were also working

in the same Division? The reasons to that effect being obscure go to show that the story put forth by the respondent that the work was being provided to the petitioner as per the availability of work and funds is incorrect. It, thus, only goes to show that the respondent had either been resorting to favouritism or had been acting in a partisan manner to one set of workmen or was resorting to such process with an oblique motive of depriving the petitioner of the status and privileges of permanent workman, entitling him to regularization as per the policy of the State Government from time to time. It appears to be an act of gross discrimination which is *ex-facie* borne out from the record."

7. As observed above, the onus to prove the fact of fictional/artificial breaks was solely upon the respondent and merely because some other workmen who may have been engaged after the engagement of the respondent were offered muster rolls for the full month after the year, 2007 could not lead to any inference that the respondent had either been discriminated or that fictional/artificial breaks had been granted to the respondent so as to defeat his claim for regularization. The plea is otherwise negated from the man-days chart (supra), which goes to indicate that the respondent had been permitted to work for 364 days in the year, 2008, 350 days in the year, 2009, 302 days in 2010, 366 days in 2012, 365 days in 2013, 363 days in 2014 and 2015 and 362 days in 2016, meaning thereby, that the respondent had been engaged throughout the year....."

16. This case is also of the similar nature and is governed by the ruling referred hereinabove. The conduct of the petitioner is such that he has raised demand after many years and he has also failed to explain as to why the demand was not raised by him at the earliest for condonation of the breaks. The petitioner while appearing as PW1 in the witness box has tendered his affidavit Ext. PW1/A in which he has not explained as to why he did not take up the matter at earliest with the concerned quarter. He has merely mentioned in the affidavit that he raised protest time and again but nothing was done by the department. Such vague averments are not sufficient to condone the delay. In his evidence, he has tendered the demand notice Ext. PW1/B and another amended demand Ext. PW1/C and Ext. PW1/D. He has tendered on record one seniority list etc, which are not very material for the purpose of present controversy. The respondent department has also filed and proved on the record seniority list for the year 2004 as Ext. RW1/C for the year 2011, Ext. RW1/D, 2006 Ext. RW1/E and details of the seniority granted to the workmen after their re-engagement after the Awards were passed in their favour as Ext. RW1/F. Ext. RW1/G to RW1/N are also the similar documents, which are also not very relevant for the present controversy.

17. In nutshell, the petitioner has failed to prove that he was given fictional breaks by the department with a view to frustrate his lawful claims under Industrial laws and to give benefits to his junior workmen. In view of the law relied upon supra, the petitioner is not entitled to the relief of condonation of the fictional breaks and his claim is liable to fail.

18. One fact needs to be taken into account in this case, before coming to any conclusion. The petitioner has been shown to have worked on daily wages basis with intervals upto the year 2015 in the mandays Chart Ext. RW1/B. In the pleadings, it is submitted by the respondent that petitioner has worked on bill basis *w.e.f* April 2013. no evidence has been led to prove either of the plea. No bill has been proved on the record. The respondent has come up with the case that after the year 2009, the Government of Himachal has issued directions to all the department to not to engage the workmen on muster roll basis. This plea does not suit the case of the respondent for many reasons. Firstly, the petitioner was not a new new workman in the year 2009 as he was working right from the year 2001 on muster roll basis. When this is so, the instruction of the Government were not applicable in the case of the petitioner. Secondly, the department has not followed the

instructions of the in the case of the petitioner at all. In case, the instructions were followed, then there was no reason to issue muster rolls to the petitioner till the year 2013, even if the pleadings of the respondent are considered correct on their face value. He could have been asked to work on bill basis. Since the petitioner has worked in continuity after the year 2009 also, and since he was made to work on muster rolls, therefore, it is very much clear that respondent department was very much clear that the instructions of the government issued in the year 2009 were not applicable in his case, as he was working since the year 2001 on muster rolls and instructions issued in the year 2009 were to apply prospectively to those workmen who were already not working prior to 2009. The petitioner has been shown to have worked in the year 2015 on bill basis in the mandays chart Ext. RW1/B, but no document has been placed and proved on the record to show that the petitioner was apprised of the change of the terms and conditions of his services. Since there is no reference regarding the adjudication on the change in the terms and conditions of services, therefore, no relief can be granted on this ground.

19. In view of fact that the petitioner has not raised the issue of fictional breaks at earliest, the petitioner is not entitled for the relief of condonation of fictional breaks as claimed by him in view of the detailed reasons given in para Nos. 15 to 17 of this Award. Petition is maintainable for the reason that it has been filed in support of the reference but it is different matter that the petitioner has failed to establish the claim, hence, issues No. 1 and 2 are held in negative against the petitioner and issue No. 3 is held in favour of the petitioner.

Relief:

20. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

21. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref No. : 75/2019
Date of Institution : 06-06-2019
Date of Decision : 25-07-2023

Shri Ajit s/o Shri Prem Singh, r/o Village and Post Office Giun, Tehsil Dharampur, District Mandi, H.P. . .Petitioner.

Versus

The Managing Director, OPPO Mobiles (NR) Private Limited, Unit No.651-655, 6th Floor, JMD Megapolis, Sohan Road, Sector-48, Gurgaon, Haryana, 122018, through Branch Manager, Branch Office SCO 1066-67, 1st Floor, Sector-22B, Chandigarh.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Vikas Chander, Ld. Adv.

For Respondent : Sh. Bhupinder Singh, Ld. Adv.

: Sh. Rakeshwar Jamwal,

Manager (HR) of the Company

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the termination of services of Shri Ajit s/o Shri Prem Singh, r/o Village and Post Office Giun, Tehsil Dharampur, District Mandi, H.P. by the Managing Director, OPPO Mobiles (NR) Private Limited, Unit No.-651-655, 6th Floor, JMD Megapolis, Sohan Road, Sector-48, Gurgaon, Haryana-122018 through Branch Manager, Branch Office: SCO 1066-67, 1st Floor, Sector-22B, Chandigarh-160022 during January, 2018 without serving notice, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to from the above employer?”

2. The petitioner filed claim in support of the reference and the respondent filed reply to the same. Issues were settled and statement of petitioner's witness were also recorded. When the file was listed for respondent's evidence the parties through their Counsel and Manager (HR) came forth and submitted that the matter has been compromised between two once and all the times come and the petitioner was no more interested in pursuing the reference as he has received full and final payment of settlement from the respondent. Statement of learned counsel Shri Vikas Chander appearing for the petitioner was recorded separately today and statement of Shri Bhupinder Singh learned counsel for the respondent has also been recorded. The petitioner is no more interested in pursuing the reference and does not want adjudication on the point as to whether his termination was in violation to the provisions of the Industrial Disputes Act or not. He does not claim either re-engagement or any compensation through the award of the court as he got the matter settled on his own level with the respondent at his own level. In view of this position, the reference is answered accordingly holding that the matter stands settled between the parties once and for all and therefore, the issue of termination is not pursued further by the petitioner as he is neither interested in working further nor in the prayer for his reinstatement. In view of this, the reference is answered accordingly.

3. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 25th day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 77/2019
Date of Institution : 06-06-2019
Date of Decision : 25-07-2023

Shri Vishal Dixit s/o Shri Nagender Kumar, r/o House No.33/6, Lower Samkheter Muhalla,
Mandi Town, District Mandi, H.P. . . *Petitioner.*

Versus

The Managing Director, OPPO Mobiles (NR) Private Limited, Unit No.651-655, 6th Floor,
JMD Megapolis, Sohan Road, Sector-48, Gurgaon, Haryana, 122018, through Branch Manager,
Branch Office SCO 1066-67, 1st Floor, Sector-22B, Chandigarh.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Vikas Chander, Ld. Adv.
For Respondent : Sh. Bhupinder Singh, Ld. Adv.
: Sh. Rakeshwar Jamwal,
Manager (HR) of the Company

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the termination of services of Shri Vishal Dixit s/o Shri Nagender Kumar, r/o House No.33/6, Lower Samkheter Muhalla, Mandi Town, District Mandi, H.P. by the Managing Director, OPPO Mobiles (NR) Private Limited, Unit No.-651-655, 6th Floor, JMD Megapolis, Sohan Road, Sector-48, Gurgaon, Haryana-122018 through Branch Manager, Branch Office: SCO 1066-67, 1st Floor, Sector-22B, Chandigarh-160022 during January, 2018 without serving notice, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to from the above employer?”

2. The petitioner filed claim in support of the reference and the respondent filed reply to the same. Issues were settled and statement of petitioner's witness were also recorded. When the file was listed for respondent's evidence the parties through their Counsel and Manager (HR) came forth and submitted that the matter has been compromised between two once and all the times come and the petitioner was no more interested in pursuing the reference as he has received full and final payment of settlement from the respondent. Statement of learned counsel Shri Vikas Chander appearing for the petitioner was recorded separately today and statement of Shri Bhupinder Singh learned counsel for the respondent has also been recorded. The petitioner is no more interested in pursuing the reference and does not want adjudication on the point as to whether his termination was in violation to the provisions of the Industrial Disputes Act or not. He does not claim either re-engagement or any compensation through the award of the court as he got the matter settled on his own level with the respondent at his own level. In view of this position, the reference is answered accordingly holding that the matter stands settled between the parties once and for all and therefore, the issue of termination is not pursued further by the petitioner as he is neither interested in working further nor in the prayer for his reinstatement. In view of this, the reference is answered accordingly.

3. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 25th day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref No. : 76/2019
Date of Institution : 06-06-2019
Date of Decision : 25-07-2023

Shri Kamal Kant s/o Shri Krishan Kumar, r/o House No. 289/11, Tarna Road, Mandi Town,
District Mandi, H.P. . . . *Petitioner.*

Versus

The Managing Director, OPPO Mobiles (NR) Private Limited, Unit No.651-655, 6th Floor,
JMD Megapolis, Sohan Road, Sector-48, Gurgaon, Haryana, 122018, through Branch Manager,
Branch Office SCO 1066-67, 1st Floor, Sector-22B, Chandigarh.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Vikas Chander, Ld. Adv.

For Respondent : Sh. Bhupinder Singh, Ld. Adv.

: Sh. Rakeshwar Jamwal, Manager

(HR) of the Company

AWARD

The following reference has been received from the appropriate Government for
adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as
'the Act' for short).

“Whether the termination of services of Shri Kamal Kant s/o Shri Krishan Kumar, r/o House No.289/11, Tarna Road Mandi Town, District Mandi, H.P. by the Managing Director, OPPO Mobiles (NR) Private Limited, Unit No.-651-655, 6th Floor, JMD Megapolis, Sohan Road, Sector-48, Gurgaon, Haryana-122018 through Branch Manager, Branch Office: SCO 1066-67, 1st Floor, Sector-22B, Chandigarh-160022 during January, 2018 without serving notice, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to from the above employer?”

2. The petitioner filed claim in support of the reference and the respondent filed reply to the same. Issues were settled and statement of petitioner's witness were also recorded. When the file was listed for respondent's evidence the parties through their Counsel and Manager (HR) came forth and submitted that the matter has been compromised between two once and all the times come and the petitioner was no more interested in pursuing the reference as he has received full and final payment of settlement from the respondent. Statement of learned counsel Shri Vikas Chander appearing for the petitioner was recorded separately today and statement of Shri Bhupinder Singh learned counsel for the respondent has also been recorded. The petitioner is no more interested in pursuing the reference and does not want adjudication on the point as to whether his termination was in violation to the provisions of the Industrial Disputes Act or not. He does not claim either re-engagement or any compensation through the award of the court as he got the matter settled on his own level with the respondent at his own level. In view of this position, the reference is answered accordingly holding that the matter stands settled between the parties once and for all and therefore, the issue of termination is not pursued further by the petitioner as he is neither interested in working further nor in the prayer for his reinstatement. In view of this, the reference is answered accordingly.

3. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 25th day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.
(Camp at Mandi).

**IN THE COURT OF SH. HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 192/2016

Date of Institution : 26-3-2016

Date of Decision : 31-7-2023

Shri Yog Raj s/o Shri Ghesu Ram, r/o Village Hyun, P.O. Urla, Tehsil Padhar, District
Mandi, HP. . . *Petitioner.*

Versus

The Senior Executive Engineer, Electrical Division, H.P.S.E.B Limited, Joginder Nagar,
District Mandi, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Vijay Kaundal, Ld. Adv.

For the respondent : Sh. R.S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether alleged termination of services of Shri Yog Raj s/o Shri Ghesu Ram, r/o Village Hyun, P.O. Urla, Tehsil Padhar, District Mandi, H.P. w.e.f. 25.09.1998 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited, Joginder Nagar, District Mandi, H.P., who had worked as beldar on daily wages only for 59 days during years, 1996-98 and has raised his industrial dispute after more than 14 years vide demand notice dated 27.12.2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working

period of 59 days during years 1996-98 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. After receipt of the reference a corrigendum dated 24 May 2018 has been received from the appropriate Government which reads as under:—

“Whereas, a reference has been made to this Ld. Labour Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. vide notification of even No. dated 17-03-2016 for legal adjudication. However, inadvertently the correct facts could not be mentioned about the date of termination in the said notification. Therefore, the same may be read as “30.11.1999” instead of “25.09.1998”.

3. The case of the petitioner, in brief, is to the effect that he was engaged on daily wages on muster roll basis as beldar by the respondent *w.e.f.* 1995 and he worked till November 1999 with interruptions and breaks at the instance of respondent department. His services were terminated *w.e.f.* 30.11.1999 after serving him notice dated 5.11.1999 with other co-workers namely Khem Singh, Subhash, Megh Singh etc. on the ground that budget was not available with the department. Later on the department engaged fresh workmen named in para No. 8 of the claim but no opportunity was given to the petitioner and his fellow workmen shown in para No. 2 of the claim. The petitioner approached the appropriate Government by way of demand but reference was not made on the ground of delay. He moved the Hon'ble High Court by way of Writ Petition, where after, the reference was made by the Appropriate Government. The petitioner has claimed for his reinstatement by taking the plea that similar situated workmen were re-engaged either by the order of the court or otherwise and he was also entitled for similar treatment.

4. The respondent has resisted and contested the petition and taken the plea that petitioner's services were never terminated. He rather left the work at his own and abandoned the same. The petitioner is said to have approached the court after long delay and he had worked only for 58 days in period of two years and he was not entitled for any relief as he has approached the court after more than 14 years.

5. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. He asserted that he had never abandoned the work.

6. From the pleadings of the parties and language of the reference, following issues were framed for determination on 29.5.2018:—

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 25.09.1998 is/was improper and unjustified as alleged? .. *OPP.*

2. If issue No .1 is proved in affirmative to what service benefits, the petitioner is entitled? .. *OPP.*

Relief.

7. I have heard learned Counsels for the parties at length and considered the material on record.

8. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

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| Issue No. 1 | : decided accordingly |
| Issue No. 2 | : decided accordingly |
| Relief. | : Petition is partly allowed awarding lump sum compensation of Rs.25,000/- per operative portion of the Award |

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are taken together for disposal for the sake of convenience and to avoid repetition of evidence.

10. The petitioner examined one Shri Khem Singh as PW1 in the witness box. He is Senior Assistant of the respondent office and has tendered provisional seniority list of the workman as on 1.1.2011 as Ext. PW1/B and mandays chart of the petitioner as Ext. PW1/C. He has tendered on record joining reports of Shri Ramesh Kumar and Satwinder Kumar as Ext. PW1/D and Ext. PW1/E. By way of this statement, the petitioner intends to prove that similarly situated workmen were also re-engaged and their joining reports are on the record. The petitioner has appeared as PW2 in the witness box and his affidavit Ext. PW2/A wherein he has detailed the facts pleaded by him in the claim. He was subjected to cross-examination wherein he tendered a copy of letter received by him from the department as Ext. PA. This document has not been disputed by the respondent department. It is clear from this document that it has been signed the Assistant Engineer. As per this letter the petitioner was served a notice to the effect that work was not available for him w.e.f. 30.11.1999. The petitioner has specifically pleaded regarding this letter in para No.2 of the claim and respondent has vaguely replied this para. Vague denial is an implied admission. Since the letter duly signed by the then Assistant Engineer was produced before the court it was the duty of the respondent to have either admitted or denied or explained the contents of this document. No effort was made on behalf of the respondent to explain the position. The respondent has examined Er. Gaurav Sharma as RW1 and his affidavit Ext. RW1/A. He is absolutely silent regarding the letter produced by the petitioner before this court. Since this document was produced during the statement of the petitioner, the respondent had ample opportunity to meet the same on its turn. There should have been specific averment made in the affidavit of Shri Gaurav Sharma (RW1) regarding existence of this letter. This letter carries the number as well as dispatch number. Shri Gaurav Sharma has come up with the plea that since the previous records have been destroyed and nothing can be stated about any fact. It is clear from the statement of Shri Gaurav Sharma that all the previous records stand destroyed therefore, he is not able to meet the case. In view of the letter Ext.PA which has not been countered in any manner by the respondent, the mandays chart produced as Ext. PW1/C is prove to be a wrong document and as per this letter petitioner was asked to not to report for duties w.e.f. 30.11.1999. Therefore, it means that the petitioner has worked in the department until 30.11.1999 as has been claimed by him in the claim and the reference however, has been received by this court to adjudicate the question of termination of the services of the petitioner on 25.9.1998. Since the petitioner was very much in service till 30.11.1999 therefore, it can not be said that his services were terminated on 25.9.1998. The law is well settled to the effect that discrepancy in the date of termination is not very material when it is an admitted fact that the services of the petitioner have been terminated subsequently. It is also settled law that the claim can not be rejected on the simple ground that there is variation of date. Reference may be made to the judgment of Hon'ble High Court of Himachal Pradesh delivered in **Sansar Chand vs. State of H.P. & Another in CWP No.7117/2012 decided on 17.8.2017**. In the case in hand, since the services of the petitioner have been terminated therefore, it

is immaterial as to whether the termination of the services of the petitioner took place on 25.9.1998 or 30.11.1999. The fact remains that the services of the petitioner have been terminated and that too by way of a letter Ext. PA. Once the services of the petitioner were terminated on the ground of budgetary provision was available then his services should have been re-engaged when work and fund both were available. The petitioner has mentioned in para no.8 of the claim names of several persons who were retained at the time when the services of the petitioner were terminated. The respondent has not specifically denied the averments made in this para and the petitioner has reproduced this para by deposing all these facts on oath. There is no cross-examination on this aspect upon the petitioner. Er. Gaurav Sharma has also not said anything about the workmen shown by the petitioner in para no.8 of the claim. Since the petitioner has specifically pleaded the names of those workmen who were junior to him and were retained on the date when his services were terminated. It was the duty of the respondent to have explained the position by leading better evidence. Since no such evidence led on the record therefore, averments made by the petitioner in para no.8 of the names stand for the purpose of this case and it is held that the workmen junior to the petitioner were retained and fresh hands were also engaged and thus violation of Sections 25-G and 25-H of the Act are taken place in this case.

11. The petitioner has approached the appropriate Government after a considerable delay and there is no explanation for the same. The reference has specifically been made by the appropriate Government on the question of delay. This court has been called upon to adjudicate the effect of delay of 14 years that has occasion in between the date of termination and the date of demand notice. It was for the petitioner to have explained as to why this delay was caused by not approaching the court. No explanation has come from the petitioner regarding the same. Why he remained sleeping over his right for long as many as 14 years? He has though tried to justify the delay on the ground that he met the authorities time and again but nothing was done but such explanation is not sufficient for the reasons that when nothing was done by the authorities, the petitioner should have raised the demand and got the matter settled through judicial intervention. The petitioner slept over his rights for as many as 14 years and thus delay has been fatal in this case. It is settled law that when workman has approached the court after considerable delay and remained sleeping over his rights for long he loses right of reinstatement and the court is not supposed to order his re-engagement. Taking into account the long delay in raising the demand the ends of the justice shall be met and the respondent is directed to pay compensation in lump sum in lieu of reinstatement and other benefits to the tune of Rs.25,000/- (Rupees Twenty Five Thousand Only). The petition is maintainable for the reason that it has been filed in support of the reference. Hence both these issues are decided accordingly.

RELIEF

12. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case and the petitioner had raised demand after a gap of more than 14 years and his claim for reinstatement has thus been vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹25,000/- (Rupees Fifty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

13. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of July, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

MUNICIPAL CORPORATION MANDI, HIMACHAL PRADESH

Amendment in Municipal Corporation Mandi (Facilities to Mayors, Deputy Mayors and Councilors) Bye-Laws

Dated, the 24th July, 2023

No. UD-MC-MANDI-2023.—In compliance the Principal Secretary (UD) to the Govt. of Himachal Pradesh letter No. UD-A(2)-2/2023, dated 23-05-2023, Budget Announcement (No.103 for the year 2023-24) Increase in Honorarium of Mayors/Deputy Mayors and Councilors of Municipal Corporation Mandi and resolution No. 7, dated 27-06-2023 approved by Municipal Corporation Mandi in its General House meeting held on 27-06-2023 are hereby amended in Municipal Corporation Mandi (Facilities to Mayors, Deputy Mayors and Councilors) Bye-Laws from the date of publication of said Rules in the Gazette.

Sd/-
Commissioner,
Municipal Corporation Mandi (H.P.).

CHANGE OF NAME

I, Farwaha Daljit Singh s/o Mohinder Singh, r/o Top Floor, Butter Mere Estate, Summer Hill, Bazar Area, Main Chowk, Shimla (T), Shimla (H.P.) have changed my minor daughter's name from Equm to Farwaha Equm. In future she may be known by the name Farwaha Equm.

FARWAHA DALJIT SINGH
s/o Mohinder Singh,
r/o Top Floor, Butter Mere Estate,
Summer Hill, Bazar Area,
Main Chowk, Shimla (T), Shimla (H.P.).